Rail Enhancement Fund

Application Procedures

Policy Goals Adopted by the

Commonwealth Transportation Board
October 20, 2005

Rail Advisory Board
October 13, 2005

Virginia Department of Rail and Public Transportation
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Rail Enhancement Fund

Application Procedures

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Rail Enhancement Fund Program

Program Overview

Under §33.1-221.1:1.1 of the Code of Virginia (Appendix E), the General Assembly declared it to be in the public interest that the preservation and development of railway transportation facilities are important elements of a balanced transportation system in the Commonwealth. It further declares "it to be in the public interest that the retention, maintenance, improvement and development of the railways are essential to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets. There is hereby created in the state treasury a special non-reverting fund to be known as the Rail Enhancement Fund which shall be considered a special fund within the Transportation Trust Funds, hereafter referred to as 'the Fund.'"

The Code states that the Director of the Department of Rail and Public Transportation (DRPT) "shall administer and expend or commit, subject to the approval of the Commonwealth Transportation Board, the Fund for acquiring, leasing, and/or improving railways or railroad equipment, rolling stock, rights-of-way or facilities, or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way or facilities, for freight and/or passenger rail transportation purposes whenever the Board shall have determined that such acquisition, lease, and/or improvement is for the common good of a region of the Commonwealth or the Commonwealth as a whole."

The Code further states that "Projects undertaken pursuant to this section shall be limited to those the Commonwealth Transportation Board shall have determined will result in public benefits to the Commonwealth or to a region of the Commonwealth that are equal to or greater than the investment of funds under this section. Such projects shall include a minimum of 30 percent cash or in-kind matching contribution from a private source, which may include a railroad, a regional authority, or a local government source, or a combination of such sources."

This document describes the policies and procedures applicable to the consideration of requests for expenditures from the Rail Enhancement Fund.

General

1. A Rail Advisory Board (RAB) consisting of nine members, appointed by the Governor, has been established. The RAB, in consultation with the Director of DRPT, will develop recommendations to be presented to the Commonwealth Transportation Board (CTB) regarding allocations of funds from the Rail Enhancement Fund. The RAB will also advise the Director on other matters upon request.

2. The Director of DRPT administers and, subject to CTB approval, expends or commits funds from the Rail Enhancement Fund for the purpose of acquiring, leasing, and/or improving railways or railroad equipment, rolling stock, rights-of-way or facilities for freight and/or passenger rail transportation purposes. The Director of DRPT will obtain the recommendation of the RAB before submitting a project involving utilization of Rail Enhancement Funds to the CTB.

3. Projects undertaken are limited to those determined by the CTB to result in public benefits to the Commonwealth or to a region of the Commonwealth equal to or greater than the public investment.

4. All projects receiving funds from the Rail Enhancement Fund must include a minimum of 30% cash or in-kind matching contribution from a private source, which may include a railroad, a regional authority, a local government source, or a combination of such sources.

5. All Grantees receiving funds from the Rail Enhancement Fund are contractually required to seek out and utilize Small, Women, and Minority (SWAM) owned enterprises in relation to projects funded. A goal of 40% of total eligible grant expenditures is established by execution of the Rail Enhancement Fund Agreement by the parties. Grantee must report such SWAM activity quarterly beginning at the end of the first three month period from the date of Agreement and ending at the close of the last quarter that includes the project completion, final invoice and acceptance by DRPT.

Program Policy Goals

The following Program Policy Goals were recommended by the Rail Advisory Board on 10/13/2005 and adopted by the Commonwealth Transportation Board on 10/20/2005. Goals 1, 2, 3 and 5 are minimum policy criteria for project consideration. Compliance with these minimum criteria must be demonstrated before further consideration will be given to funding a project.

1. **Projects will provide an additional or accelerated investment in Virginia rail projects, which are determined to have a substantial public benefit equal to or greater than the public investment.**

   The Rail Enhancement Fund provides funding for the development and improvement of rail infrastructure in Virginia and also for the acquisition of rolling stock, signal systems and equipment. The Rail Enhancement Fund will be used to fund projects and proposals found to have a public benefit that is equal to or greater than the public investment, and which are not likely to be completed in a timely manner without use of Rail Enhancement Funds.

2. **Projects will address the needs identified in the applicable state, regional and/or local plans, developed in consultation with public and private partners.**

   Projects will generally address the needs identified in the applicable state, regional and/or local plans to the extent such plans exist, including VTrans2025, The Virginia State Rail Plan and those goals adopted by Governor Warner's Commission on Rail Enhancement for the 21st Century. In addition, DRPT is developing statewide rail plans for rail initiatives in the Commonwealth, which will be referenced upon completion.

3. **Projects will encourage competition and economic development by promoting, or not precluding, access by more than one rail operator and whenever possible joint access by freight and passenger operators to optimize the Commonwealth's investment.**

   Projects should maximize rail usage and promote competition whenever feasible. Projects in corridors that are utilized for both freight and passenger service must demonstrate that both types of service will benefit from the improvement. Where feasible, rail infrastructure-related projects should not be designed to preclude access by more than one operator.

4. **The use of Rail Enhancement Funds will evolve from a focus on quick turn-around, high impact projects to a multi-year strategic program of projects that leads to an integrated six-year rail (passenger/freight) improvement program.**

   The Director of DRPT, in consultation with and with the assistance of the Rail Advisory Board, will develop recommendations for an annual program of projects that will be incorporated into the Commonwealth's Six-Year Improvement Plan. In addition to considering applications, the Director of DRPT and the Rail Advisory Board may also recommend specific projects for consideration. Individual projects will be viewed in terms of how they benefit the overall rail network in Virginia.

5. **The Program will limit long term Commonwealth funding liability through the development of achievable project schedules and budgets. Consideration will be given to funding major projects over a period of several years.**

   Projects will limit the long term liability of the Rail Enhancement Fund by proposing and adhering to achievable schedules and budgets. Well-defined project budgets and schedules will be developed prior to submission of applications and projects will be completed within a specified time frame. Applications for projects will include detailed cost, schedule and budget information. For construction projects, applications that include preliminary engineering completed to 30% will receive more positive weight and consideration during the review process. Some large projects will require funding over several years. DRPT will work with the Rail Advisory Board to identify those projects that, due to their size and complexity, require funding over an extended period. The CTB will give consideration to the duration of funding for multi-year projects. Project progress will be closely monitored to ensure that they continue to move toward completion in accordance with their proposed schedules and budgets.

6. **Where feasible, projects will optimize public benefits by leveraging funds from sources other than the Rail Enhancement Fund.**

   The law creating the Rail Enhancement Fund requires a minimum of a 30 percent cash or in-kind matching contribution from a private source, which may include a railroad, a regional authority, a local government source, or a combination of such sources. Projects are likely to receive more favorable consideration if a higher match ratio is proposed. Projects that are part of a larger package of improvements funded from other sources are encouraged and are likely to receive more favorable consideration. Additional investments above the minimum match requirement broaden the sharing of the risk and improve the chances of project success.

7. **Projects will protect the Commonwealth's public interest in private facilities.**

   The Commonwealth will ensure that any improvements made with public funds remain available for the proposed public use for the useful life of the project. Contractual agreements will be written to protect the Commonwealth's public interest in the private facilities and to require compensation for the residual value of the investment if the public use ceases within the period of useful life.

8. **Projects will contribute to the effectiveness of the entire transportation system.**

   Projects will promote congestion relief, encourage economic development, enhance the competitiveness of Virginia ports, airports, and multi-modal facilities, and promote safety, health and environmental benefits, and improve mobility or any combination of these objectives.

9. **At least 90 percent of program funds will be spent on capital improvements.**

   At least 90% of the Rail Enhancement Fund in any fiscal year will be expended on acquiring, leasing, and/or improving railways or railroad equipment, signals and communication improvements, rolling stock, rights-of-way or facilities, including design and construction engineering. Up to 10% of the Fund in any fiscal year may be spent on planning and environmental evaluation leading to capital project improvements.

Program Implementation

The Rail Enhancement Fund Program is administered by the Director of the Virginia Department of Rail and Public Transportation in accordance with decisions of the Commonwealth Transportation Board. The Director of DRPT will consult with and obtain the advice and recommendations of the Rail Advisory Board in preparation of an annual program of projects for implementation. Listed below are the program roles, selection process and execution requirements for the administration of the Rail Enhancement Fund Program.

Program Roles

Role of the Commonwealth Transportation Board

The Commonwealth Transportation Board (CTB) is the policy board for the Virginia Department of Rail and Public Transportation (DRPT) and the Virginia Department of Transportation (VDOT). This role includes the formulation and adoption of program development guidelines, policies, procedures, and allocation of funds for programs of projects. In accordance with §33.1-221.1:1.1, the CTB must determine that projects undertaken pursuant to the Rail Enhancement Fund result in public benefits to the Commonwealth or to a region of the Commonwealth that are equal to or greater than the level of investment of Rail Enhancement funds.

Role of the Rail Advisory Board

As established in §33.1-391.3:1, the Rail Advisory Board (RAB) consists of nine members appointed by the Governor for terms of four years. One of the nine appointees is an at-large member of the CTB. The role of the RAB is to develop recommendations, in consultation with the Director of DRPT, to be presented to the CTB regarding all proposed allocations of funds from the Rail Enhancement Fund, to work cooperatively with the Director of DRPT and with any affected railroad in identifying, developing, and advocating projects and policies to enhance the quality and utility to the public of rail transportation in the Commonwealth, and to advise DRPT on other matters at the request of the Director of DRPT.

Role of the Virginia Department of Rail and Public Transportation

Through its Director, DRPT is responsible for the analysis of projects and proposals and development of information necessary to assess the proposals. The agency is also responsible for developing the program of projects, implementing the program and providing periodic progress reports to the RAB and CTB. The Director will consult with the RAB to obtain advice and recommendations. The agency is responsible for executing necessary agreements and ensuring program compliance for projects, including compliance with applicable environmental review and public involvement requirements.

Relationship to Transportation Plans

Rail Enhancement Fund Program development includes the coordination of projects to address the needs identified in applicable statewide, regional and/or local transportation plans. Existing plans and initiatives include the VTrans 2025 Statewide Transportation Plan and its rail component, the Virginia State Rail Plan, as well as the Governor's Commission on Rail Enhancement for the 21st Century Report. In addition, DRPT is developing statewide rail plans and upon completion, these plans will help guide the selection of future projects.

Eligible Recipients

The following organizations are eligible to apply for Rail Enhancement funding:

1. Commuter and Intercity Passenger Rail Operators
2. Freight Rail Operators
3. Private Businesses or Industries that currently utilize rail or are planning to develop railway facilities in the future
4. Regional Authorities
5. Local Governments
6. Non-profit Organizations
   (or any combination of the above)

Eligible Project Expenses

Eligible expenses may include the following:

1. Preliminary service, engineering, or feasibility study
2. Final engineering
3. Permitting
4. Acquisition, lease, or improvement of rights of way or facilities

5. Environmental mitigation directly related to the project
6. Site preparation including grading, drainage and relocation of utilities
7. Acquisition, lease, or improvement of railways, including signal and communications equipment
8. Acquisition, lease, or improvement of railroad equipment
9. Acquisition, lease, or improvement of rolling stock
10. Public involvement expenses, as agreed

Project Selection Process

The process of identifying projects to be funded will evolve over time. To the extent feasible, submitted proposals and candidate projects will be consistent with the priorities defined in the DRPT statewide rail plans and other state transportation plans. All selected projects will be integrated into the Six-Year Improvement Program (SYIP) upon approval and allocation by the CTB.

1. Projects will be advanced for consideration following the procedures developed by DRPT, with concurrence from the RAB.
   - Applications for specific projects will be accepted through an annual solicitation process. Projects of urgent significance will be considered for funding on a case by case basis, and may be considered outside of the annual solicitation.
   - Upon completion, DRPT's statewide rail plans will be considered as part of the evaluation process for candidate projects.
   - All rail projects will be fully integrated into the Six-Year Improvement Program upon approval and allocation by the CTB.

2. Applicants will be permitted an opportunity to respond to questions concerning their application submittals. DRPT will analyze applications and candidate projects, and the Director of DRPT will present recommendations to the RAB.

3. The RAB will work cooperatively with the Director of DRPT and with any affected railroad in identifying, developing, and advocating projects and policies to enhance the quality and utility to the public of rail transportation in the Commonwealth.

4. In consultation with, and with the assistance of the RAB, DRPT will develop recommendations within a Program of Projects to be presented to the CTB regarding all proposed allocations of funds from the Rail Enhancement Fund as part of the annual Six-Year Improvement Program process.

5. DRPT will present a program of projects to the RAB and the CTB for their consideration on an annual basis. This presentation will include a determination that the projects are for the common good of a region of the Commonwealth or the Commonwealth as a whole and that the public benefits are equal to or greater than the investment of the Rail Enhancement funds.

6. The CTB will approve the annual program of projects for the Rail Enhancement Fund, allocate funds, and incorporate projects into the SYIP. Projects of urgent

significance, or multi-year projects under construction, may be considered throughout the year on a case by case basis.

7. The Director of DRPT will develop and negotiate an agreement with each applicant for each project approved by the CTB that is based on the standard agreement in Appendix C. The agreement will stipulate the time frame for implementation and completion of each project, and each agreement will include applicable environmental and public involvement requirements.

8. Periodic status reports will be provided to the CTB and RAB on all projects.

Project Execution Requirements

In any year of the program, projects that are selected for funding will follow the procedures listed below to ensure compliance with program requirements:

Administrative Process

1. DRPT will undertake a review of applications and conduct a critical screening for compliance with the minimum policy criteria for project consideration. Those applications that pass will be subjected to a public benefit/cost analysis (see Appendix B). The time frame for analysis will be determined by the Director of DRPT with a baseline planning horizon of 15 years. The applicant may suggest an alternate time frame for the project being submitted.

2. Following CTB approval of Rail Enhancement Fund allocations, the Director of DRPT will notify the successful applicant(s).

3. The Director of DRPT will develop and negotiate an agreement with each applicant for each project approved by the CTB that is based on the standard agreement in Appendix C. The agreement will stipulate the time frame for implementation and completion of each project. Each agreement will include applicable environmental and public involvement requirements.

4. DRPT will develop procedures for projects involving work to be completed beyond the existing boundaries of railroad property. These projects will be reviewed on a case-by-case basis.

5. Payments will be made on a reimbursement basis. Grantee shall submit invoices with no greater than six (6) months of accrued charges (generally monthly) for that portion of the work that has been completed. Invoices containing accrued charges of greater than six (6) months will not be paid. DRPT will review the project progress and approve invoice payments according to the agency's Grants Management procedures. Invoice backup documentation should clearly show matching fund requirements for DRPT's compliance review. Invoice backup shall also include all certifications and test reports required by the project plans and specifications. Certifications and test reports required may be submitted under separate covers prior to submitting the invoice.

6. The grantee will maintain separate financial records for the project.

7. After the completion of work, all of the grantee's records on the project are subject to an audit. Records are to be retained for five years after completion of the project.

Monitoring and Evaluation

1. Grantee shall submit monthly progress reports during the planning and construction period.

2. Completed work will be subject to inspection by DRPT and the owning and/or operating railroad. The grantee will be required to replace any work which does not meet applicable standards, criteria or specifications at the grantee's expense.

3. DRPT will provide periodic status reports to the Rail Advisory Board and the Commonwealth Transportation Board.

4. Annual reporting of project performance and a follow-up review will be conducted on all funded and completed projects for fifteen years at the end of the performance period. This review will include a comparison of the public benefits of the project identified in the original application to the actual results demonstrated by the project. A periodic program review will be conducted to ensure that program goals are being met.

DRPT Plan Review Requirements and Process

The Grantee shall submit to DRPT a copy of the design plans and specifications for the project in both electronic (CAD files plus pdf files) and hard copy formats, if applicable. DRPT will review plans for completeness and accuracy in the following areas, as they apply:

- Proper Title Sheet and Key Plan
- Right-of-Way Lines
- Sheet List and Legend
- Utility Identification
- General Notes
- Typical Sections
- Track Diagram (if applicable)
- Existing and Proposed Track Centers
- Limits of Construction
- Adjacent Property Owners
- Title Block Information
- Adjacent Structures and Railroad Infrastructure
- Potential or Confirmed Wetlands
- Mileposts and Valuation Stations
- Valuation Map References
- Information Regarding Anticipated Conflicts
- Survey Control (if applicable)
- Other Applicable Areas

1. The Grantee shall submit design plans and specifications (where applicable) at the 30% level of completion for review and acceptance by DRPT prior to commencing Final Design.

2. The Grantee shall submit the design plans and specifications (where applicable) used as portions of the bid package for review and acceptance by DRPT prior to bidding.

DRPT Bid Review Requirements and Process

The Grantee shall submit to DRPT a copy of the bid results and tabulation for the project in both electronic (pdf files) and hard copy formats, if applicable. The Grantee shall also provide an evaluation of the bids identifying differences from the grant estimate, and recommending bid award to a specific bidder. DRPT will review the bid information and provide comments or concurrence with the recommendation to award the bid. The Grantee shall not award the bid or start construction until it has received concurrence from DRPT.

1. The bid evaluation shall include;
   - A copy of each bidder's response.
   - A tabulation of the Grant estimates for each item in the Schedule of Values, and each bidder's bid for the each item on the Schedule of Values
   - An analysis of the results, typically containing a calculation of the high, low, and average bid prices and percentage difference for the apparent low bidder for each item on the Schedule of Values.
   - An explanation for any items deviating significantly either from the average or the grant estimate for each item in the Schedule of Values.

2. The Grantee shall provide a commitment to provide additional funds to perform the project if the total bid amount exceeds the total grant estimate for the bid items.

APPENDIX A

PROJECT APPLICATION

Revised November 30, 2008

Internal Use

_____

DRPT Tracking #

Rail Enhancement Fund
Project Application Form

Date: _____

A. Name of Applicant (Name and Address)

_____

_____

_____

Applicant type:
__ Passenger Railroad
__ Freight Railroad
__ Locality
__ Business
__ Other _____

B. Contact Information:

Responsible Person/Title: _____

Telephone:_____ Fax: _____ Email: _____

Project Manager/Title: _____

Telephone:_____ Fax: _____ Email: _____

C. Project Title: _____

D. Project Location: (City/County, Rail line, Railroad Mile Post, attach map)

_____

_____

E. Owner of Property/Right-of-Way/Facility/Personal Property: _____

F. Responsible Party for Continuous Maintenance of Project: _____

G. Project Information:

1) Description of Project:

_____

_____

_____

2) Project Objective:

_____

_____

_____

3) Relationship to Other Projects under Development by Applicant or Previously Funded by this Program:

_____

_____

_____

4) Describe the Public Benefit of Project. Identify significant types of benefits and beneficiaries from this project. (See Attachment A)

_____

_____

_____

5) Attachment A – Project Data Information Form – Must be completed by Applicant and submitted with this application.

H. Type of Project:

1) __ New Construction __ Rehabilitation __ Study

2) __ Rail Infrastructure __ Rail Facility/Station
__Equipment/Rolling Stock __Signals/Communication Equipment

3) Other _____

I. Application Scope of Work Covers:

__ Entire Project __ A Phase of a Multi-Phase Project __ Completion Phase

J. Project Budget Summary:

Preliminary Service, Engineering, or Feasibility Study	$_____
Environmental Evaluation	_____
Design Engineering	_____
Right of Way Acquisition	_____
Construction	_____
Construction Management	_____
Lease/Acquisition of Equipment	_____
Public Involvement (if applicable)	_____
Other _____	_____
Subtotal Project Budget	$_____
Total Project Budget	$_____

K. Attach detailed budget and schedule information. If the project is for final design, construction or procurement; then plans, specifications and reports to a preliminary engineering level (approximately 30%) should be provided to support the project cost and major features (if applicable). A sample budget and schedule is included in Appendix D.

L. Rail Enhancement Funds Requested in this Application: $
Maximum 70% of Total Project Budget. Do not include any previous allocations or future phases.

M. Local Match Required by Applicant: $ _____

At least a minimum 30% of Total Project Budget

If Overmatch, Provide Percentage _____

1) Match Breakdown by Source (Including any in-kind match)

a. Provider of Local Match _____

b. Status (confirmed/anticipated) _____

c. Attach justification for value of in-kind match.

2) Other Funding Sources Beyond Match Requirement

a. Provider of Overmatch _____

b. Status (confirmed/anticipated) _____

N. Project implementation schedule (based in months). List major milestones of the project, including environmental review and public involvement points if applicable.

_____

_____

_____

_____

_____

O. Statement of how this project promotes or does not preclude dual/multi-access use.

_____

_____

_____

_____

_____

P. List additional users of rail line, facility, and/or equipment.

_____

_____

Q. Identify any possible environmental or other issues/concerns within the scope of this project.

_____

_____

_____

Required Attachments:
Application is not complete without items 1-5 completed by the Applicant and submitted with the Application.

1. Attachment A - Project Data Information Form (Provided)

2. Attachment B - Application Checklist (Provided)

3. Detailed cost, budget and schedule. Include preliminary engineering to 30% report, if applicable (Sample in Appendix D)

4. Certification of Match/% of Match/Documentation of Source of Match Including Defined Match Source (To be provided by Applicant)

5. Certification of Additive Investment (To be provided by Applicant)

6. Statement from the Applicant/Owner of the facility that the SWAM participation goals will be achieved by the project.

7. Statement from the owner of the facility that acknowledges the Commonwealth will have a public interest in the facilities, materials, equipment and improvements funded or impacted by this project (To be provided by Applicant/Owner)

Application and Attachment Certification

To the best of my knowledge all information contained in this application and its attachments is true. The information provided to the Virginia Department of Rail and Public Transportation (DRPT) is subject to full disclosure except where protected by Virginia Code. Any additional documentation related to this application will be provided to DRPT upon request.

Authorized Signature and Title:

_____ Date: _____

Rail Enhancement Fund
Project Application
Completed Application Submission Information

One signed original, twelve copies, and an electronic copy in pdf format of the completed application and required documentation must be mailed under applicant cover to:

Director
Virginia Department of Rail and Public Transportation
1313 East Main Street, Suite 300
Richmond, VA 23219

Internal Use

DRPT Tracking #

Rail Enhancement Fund
Project Application

Attachment A
Project Data Information Form

Date: _____

Name of Applicant and Project

_____

General Instructions: Please complete the following forms that apply to the project application.

- For Freight Service projects, complete forms A1, A2 and A5
- For Intercity/Amtrak passenger projects, complete forms A1, A3 and A5
- For Commuter/VRE passenger projects, complete forms A1, A4 and A5
- For projects that involve benefits to both freight and passenger projects, form A1 and forms A2-A4 that apply must be completed. For each completed form A2-A4, a form A5 must be completed for each category for projects resulting in multiple project benefits.

Terms:

Project Cost and Construction Period: Form A1 shall be completed with total project cost by year of expenditure with total DRPT cost identified by year of expenditure. This section must be completed for all project applications.

Demand Characteristics: This category of information relates to the additional demand for rail service (including freight and passenger) due to the project. This additional demand must be over and above baseline conditions that currently exist. The specific data to enter here defines initial demand, steady state demand, and the years until steady state demand is achieved.

Steady State Demand: This term refers to the point at which the project benefits/demand have reached a long-term, sustainable level.

Project Impact on Travel Distance: This category of information includes the distance that would be traveled by vehicle or train. All distances should be limited to miles within Virginia. The distance should relate directly to the project-impacted area.

Demand Characteristics for a 15-year Performance Period: This term refers to the project output by performance year, which will be utilized to determine the public benefits and to determine the performance requirements over the 15-year Performance Period of the Grant Agreement.

Attachment A
Form A1 – Project Cost and Construction Period

First Construction Year:

Last Construction Year:

Year	Total Project COST	Total DRPT COST
Year 1		
Year 2		
Year 3		
Year 4		
Year 5		
Total		

Use Form A-5 to provide demand characteristics for the 15-Year Performance Period.

Attachment A
Form A2 – Freight Service

	CATEGORY	UNITS	VALUE
Demand Characteristics	Steady state demand – diversion of freight to rail (from trucks)	Carloads/Year	
	First year of diversion	Carloads/Year	
	Number of years until steady state	Number of Years	

	CATEGORY	UNITS	VALUE
Project Impact on Travel Distance	Rail miles in Virginia (Existing routing before project)	Miles	
	Rail miles in Virginia (routing after project completion)	Miles	
	Number of years until steady state	Miles	

	CATEGORY	UNITS	VALUE
Conversions	Railcars per Train	Railcars/Trains	
	Rail tons per Railcar	Tons/Railcar	
	Trucks per Railcar	Trucks/Railcar	

	CATEGORY	UNITS	VALUE
Other	Change in Daily Delay for Freight Trains	Railcars/Trains	
	Reduction in Number of Rail At-Grade Crossings	Tons/Railcar	

Use Form A-5 to provide demand characteristics for the 15-Year Performance Period.

Attachment A
Form A3 – Passenger Service – Intercity/Amtrak

	CATEGORY	UNITS	VALUE
Demand Characteristics	Annual Amtrak Passengers (Existing)	Passengers/Year	
	Steady State Demand – Additional Amtrak Passengers	Passengers/Year	
	First Year Number of Additional Passengers	Passengers/Year	
	Number of Years Until Steady State	Number of Years	

	CATEGORY	UNITS	VALUE
Project Impact on Travel Distance & Time	Amtrak Passenger Trip Length (Existing)	Miles	
	Amtrak Passenger Trip Length (After Project Completion)	Miles	
	Amtrak Travel Time Per Trip (Existing)	Minutes	
	Amtrak Travel Time Per Trip (After Project Completion)	Minutes	

Use Form A-5 to provide demand characteristics for the 15-Year Performance Period.

Attachment A
Form A4 – Passenger Service – Commuter/VRE

	CATEGORY	UNITS	VALUE
Demand Characteristics	Annual VRE Passengers (Existing)	Passengers/Year	
	Steady State Demand – Additional VRE Passengers	Passengers/Year	
	First Year Number of Additional Passengers	Passengers/Year	
	Number of Years Until Steady State	Number of Years	

	CATEGORY	UNITS	VALUE
Project Impact on Travel Distance & Time	VRE Passenger Trip Length (Existing)	Miles	
	VRE Passenger Trip Length (After Project Completion)	Miles	
	VRE Travel Time Per Trip (Existing)	Minutes	
	VRE Travel Time Per Trip (After Project Completion)	Minutes	

Use Form A-5 to provide demand characteristics for the 15-Year Performance Period.

Attachment A
Form A5 – Demand Characteristics for 15-Year Performance Period

Performance Year	Performance Value*
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
14	
12	
13	
14	
15	
Total	

* For Freight Service Projects – car loads or containers per year
For Inter-City / Amtrak Passenger Projects – passengers per year
For Commuter / VRE Passenger Projects – passengers per year

Rail Enhancement Fund
Project Application Checklist
Attachment B

Internal Use
_____ DRPT Tracking #

Date: _____

Name of Applicant and Project:

_____

_____

Checklist for Application

1. Project is consistent with goals of applicable adopted state, regional and/or local plans.

___Yes ___No

2. Project is an Additive Investment to Virginia.

___Yes ___No

3. Project provides for, or does not preclude, shared or dual access opportunity.

___Yes ___No

4. Applicant has provided documentation and certification of at least a minimum 30% match.

___Yes ___No

5. Applicant has provided an environmental review plan and/or public involvement plan, if applicable, and required budget for this activity as outlined in Appendix D.

___Yes ___No

6. Application is complete, including signature and specified number of hard copies and an electronic (pdf file) copy; and Applicant has reviewed the Standard Agreement as provided in Appendix C.

___Yes ___No

APPENDIX B

MEASURES FOR PUBLIC BENEFIT/COST ANALYSIS

Public Benefit/Cost Measures Methodology

Measure	Description of Methodology
Passenger Benefits	
Reduction in Highway Construction Costs	Reduction in public expenditures for the construction of new highway lanes due to a reduction in the demand for vehicular use of roads
Reduction in Pavement Maintenance	Reduction of public costs for pavement maintenance due to fewer vehicle miles traveled as a result of drivers shifting to passenger trains
Congestion Relief	Congestion relief for the general public due to fewer vehicle miles traveled as a result of drivers shifting to passenger trains
Environmental Improvements	Reduction in pollution costs for the general public due to fewer vehicle miles traveled as a result of drivers shifting to passenger trains
Reduced Passenger Transportation Costs	Reduction in transportation costs for drivers shifting to passenger trains as represented by the difference in vehicle operating cost per mile and passenger train fare (per mile)
Reduced Crash and Accident Cost	Difference in vehicle accident costs and passenger train accident costs attributable to the shifting of drivers to trains
Travel time savings	Value of time saved for new and existing passengers that is associated with a rail infrastructural change that reduced travel times or delays
Freight Benefits	
Reduction in Highway Construction Costs	Reduction in public expenditures for the construction of new highway lanes due to a reduction in the demand for truck use of roads
Reduction in Pavement Maintenance Costs	Reduction of public costs for pavement maintenance due to fewer truck miles traveled as a result of shipping patterns shifting to freight trains
Congestion Relief	Congestion relief for the general public due to fewer truck miles traveled as a result of shipping patterns shifting to freight trains
Environmental Improvements	Reduction in pollution costs for the general public due to fewer truck miles traveled as shipping patterns shift to freight trains
Reduced Crash and Accident Cost	Difference in truck accident costs and freight train accident costs attributable to a shift in truck hauling to freight trains
Shipping Cost Reduction	Difference in the cost of shipping goods by rail due to a change in the track length
Reduced Inventory Costs	Reduction in the average cost of a delay in shipments of all goods including consumer staples and production inputs

Measure	Description of Methodology
Additional Benefits	
Reduction in Cars and Trucks on Highway	Reduction in number of highway vehicles as a result of drivers shifting to passenger trains and/or a reduction in number of trucks on highways as a result of truck diversion to freight trains
Added Capacity	This measure tracks the increased rail capacity based in terms of numbers of passengers or units of freight traveling by rail
Fuel/Pollution Savings	Fuel savings and associated reduction in greenhouse gases due to fewer vehicle miles traveled as a result of drivers shifting to passenger trains, freight shipments shifting to rail, or service distance changes that could affect either passenger or freight traffic
Increased Choices / Competition	This measure computes the reduction in total shipping costs for all rail carloads of freight that shifted from truck over a common distance traveled
Increased Employment	Public benefit fraction of the total compensation for employees that were either directly hired through the project or indirectly hired through project expenditures
Retained Employment	Public benefit fraction of the total compensation for employees that were retained because of the project or indirectly retained because of project expenditures on retained employees
Carbon Equivalent	This measure captures the reduced amount of carbon emitted due to diversion of freight and passengers to rail. Measures are in tons of CO_2 equivalent and number of cars removed from the highway

APPENDIX C

RAIL ENHANCEMENT FUND SAMPLE AGREEMENTS

1. PLANNING/DESIGN STUDY AGREEMENT

2. CONSTRUCTION AGREEMENT

C-1 Sample Standard Agreement for Planning and Design Study Grants
Rail Enhancement Fund
Subject to review and agreement by all parties

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

RAIL ENHANCEMENT FUNDING AGREEMENT

GRANTEE: ***Grantee Name***
PROJECT: ***Project Name***

AGREEMENT NUMBER: ***Number***

APPLICATION NUMBER: ***Number***

RAIL ENHANCEMENT FUNDING AGREEMENT

Agreement Number: *Number*

THIS RAIL ENHANCEMENT FUNDING AGREEMENT, hereinafter referred to as "Agreement," is made and executed as of the _____day of _____, 200_ between the Virginia Department of Rail and Public Transportation, hereinafter referred to as the "Department," acting by and through its Director, and the *Grantee Name*, hereinafter referred to as the "Grantee."

RECITALS

WHEREAS, Grantee proposes to *Project Description*; and

WHEREAS, the Director of the Department consulted with the Rail Advisory Board on *Month Day, Year*, to obtain their advice and recommendations concerning funding the Project; and

WHEREAS, in accordance with §33.1-221.1:1.1 and §58.1-2425 of the Code of Virginia (1950), as amended, the Commonwealth Transportation Board (CTB), on *Month Day, Year*, approved funding for said Project, and determined the Project is for the common good of a region of the Commonwealth or the Commonwealth as a whole and that the Project will result in public benefits to the Commonwealth or to a region of the Commonwealth that are equal to or greater than the investment of funds; and

WHEREAS, it is desired by the parties hereto to define the extent of the Project addressed herein, the responsibilities of each party, the manner of performing the necessary Work, the method and time of payment, and to set out additional conditions associated with the Project; and

(*optional*) WHEREAS, *insert here any additional factual information necessary to the contract*; and

WHEREAS, the parties desire to procure the Project for the lowest possible amount.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, it is agreed and bound between the parties hereto as follows:

DEFINITIONS

Contractor(s) means private contractor(s), including consultants, which may be engaged by Grantee to perform the Work.

Designated Representative(s) means a person or persons appointed by the Grantee or the Department to represent, in whole or in part, the party in issues associated with the Work or this Agreement.

Eligible Project Costs means a cost directly associated with the Work.

Force Majeure Event(s) means fire, flood, war, rebellion, riots, strikes, or acts of God, which may effect or prevent either party from timely or properly performing its obligations under this Agreement.

Grantee Contribution means, for the purpose of the statutory match for this project, a contribution of at least 30 percent cash or in-kind matching contribution from a private source, which may include a railroad, a regional authority, or a local government source, or a combination of such sources of total Project costs.

Monthly Progress Report means a monthly written progress report including any changes or updates to the Project Schedule, Budget, and information as provided in Attachment A.

Notice to Proceed means written notice issued by the Department authorizing the Grantee to commence a particular portion of the Work.

Project Benefit means the public benefit provided by the project for the Commonwealth of Virginia.

Project Budget means the budget for the Work in single or multiple years as broken into total costs, the Department and the Grantee participation and any subsequent amendments thereto.

Project Invoice Form means the form provided by the Department to the Grantee to use for submission for reimbursement of Eligible Project Costs incurred and paid by the Grantee, a sample of which is hereto attached as Attachment B.

Project Schedule means the schedule for completing the Work as agreed to by the parties and any subsequent amendments thereto.

Re-work means work required to correct deficiencies in the Project brought about by incomplete work, incorrect work, failure to comply with the provisions of this Agreement or state or federal regulations.

Work means any and all tasks, duties, obligations, services, requirements, and activities of whatever kind or nature, express or implied, direct or incidental, to be performed, and all items tangible and intangible, to be provided by the Grantee as defined as part of this Agreement.

ARTICLE 1
SCOPE OF WORK, BUDGET, AND MILESTONE SCHEDULE

Section 1.1 The Work under the terms of this Agreement is described as follows:

A. Preparation of a final Project Budget, Project Schedule, and Schedule of Values for the Work for approval by the Department.

B. *Project Description*.

Section 1.2 The initial Project Budget and milestone schedule as an estimate at date of Agreement is as follows:

Total Project Budget .....$ *Amount*
Maximum Commonwealth Participation .....$ *Amount*
Participation by the Grantee at a minimum of
30 percent of Project Budget .....$ *Amount*

It is agreed that the maximum funding for reimbursement by the Department as provided for in its Fiscal Year 200_ Program of Projects shall be as follows:

Fiscal Year 2009 .....$ *Amount*
Maximum Commonwealth Participation .....$ *Amount*
Participation by the Grantee at a minimum of
30 percent of Project Budget .....$ *Amount*

Milestone Schedule Description	Date of Milestone

Milestone dates are estimates only and there shall be no penalty for non-compliance. The dates may be adjusted by agreement of the parties pursuant to Section 11.3.

Final Design Completion .....*Month Day, Year*

Project Acceptance by Commonwealth .....*Month Day, Year*

Project Closeout Date .....*Month Day, Year*

Amounts not spent in Fiscal Year 20__ shall be carried over into subsequent years, so that the entire $ *Amount* is available for reimbursement for Eligible Project Costs during the life of the Project. It is understood by the parties that the initial Project Budget as stated above is an estimate as of the date of contracting only, and may be lower or higher by the time of the Work and/or completion of the Work. The Grantee acknowledges that the Commonwealth's share of the Project Cost cannot exceed the amount of this Agreement.

Section 1.3 The Grantee is responsible for completing the Project or having the Project completed. In the event that the Grantee is not performing the Work as described in Section 1.1, the Work being performed by others shall be approved by the Grantee and the Department.

Section 1.4 In the event that the Grantee receives subsequent allocation(s) of state funding from another source or federal funding applicable to this Project, the allocation(s) set forth herein from the Rail Enhancement Fund shall be reduced by the amount of the subsequent allocation(s).

Section 1.5 Any cost of completing the Work in excess of the Project Budget shall be the responsibility of the Grantee. However, the Grantee has the right to revise the Work at its discretion so that total Project costs do not exceed the Project Budget provided that the Work is completed as described in Article 1. Project Benefit pursuant to this Agreement shall remain unchanged by changes to the plans or specifications of the Work.

Section 1.6 A Monthly Progress Report including any changes or updates to the Project Budget and Schedule, and information as provided will be submitted to the Department. The Report will make particular reference to progress towards completing milestones contained in the Progress Schedule. A sample Monthly Progress Report with required information in addition to the Project Budget and Schedule submission is provided in Attachment A.

Section 1.7 Funding availability is subject to annual appropriation by the General Assembly and allocation by the Commonwealth Transportation Board.

ARTICLE 2
PLANNING, DESIGN, ENGINEERING, AND CONSTRUCTION

Section 2.1 By execution of this Agreement, the Department is providing approval of the initial Project Scope, Project Budget and Project Schedule specified in Article 1. Accordingly, the Grantee is able to incur Eligible Project Cost(s) from the date of execution of this agreement to support development of the final Project Scope, Project Budget and Project Schedule for submission to the Department. The Department's approval does not make any warranty as to the accuracy or suitability of the information submitted, nor does it relieve the Grantee of any liability under this Agreement. Such submissions provided shall contain the approval of the Grantee in those situations where the submitter is not the Grantee.

Section 2.2 The Grantee shall not commence the Work described in Article 1, Section 1.1.B until the Department has issued in writing a Notice to Proceed for this Work. Prior to issuing the Notice(s) to Proceed, the Grantee must submit a final Scope of Work, Project Budget, and a Milestone Schedule for each part of the work to the Department for approval. The Estimated and a Final Project Budget and Project Schedule shall be attached to this Agreement.

Section 2.3 In the event the Grantee desires to perform preliminary engineering, design, or order any material for the Work prior to receiving Notices to Proceed from the Department, the Grantee shall formally request a Letter of No Prejudice from the Department, in which an example letter is provided in Attachment C. The costs for such preliminary engineering, design, or material will only be considered Eligible Project Costs if the costs are incurred after issuance of the Department's Letter of No Prejudice and upon the issuance of Notices to Proceed. However, nothing shall obligate the Department to reimburse the Grantee for any portion of the cost of such design or material in the absence of the Department's Letter of No Prejudice or Notices to Proceed.

Section 2.4 The Department reserves the right to reject any Plans, Specifications, Project Budget or Project Schedule because the Department's own analysis reveals that significant cost or schedule savings could be achieved through other contracting means than Grantee proposes, and meet the Grantee's performance and/or Project requirements.

Section 2.5 The Grantee shall design according to the most recently approved Project Budget and Project Schedule.

Section 2.6 Notwithstanding any other provision in this Agreement, the Grantee shall inspect or shall have inspected the Work to:

A. Ensure that it complies with the contract specifications; and

B. Verify labor and materials charges for contracts providing for payment on an actual cost basis.

Section 2.7 Notwithstanding any other provision in this Agreement, if either the Grantee or the Department determines that the design is not in accordance with the standards as delineated by the American Railway Engineering and Maintenance-of-Way Association (AREMA), or any applicable federal, state, or local law, the Grantee shall correct any workmanship necessary to cure the deficiency. The Grantee shall not use any funds provided under this Agreement to pay for a correction required under this subsection.

Section 2.8 Notwithstanding any other provision in this Agreement, the Department may take any action, including the inspection of all Project books and records of the Grantee, any Contractor or subcontractor, relating to any project or task receiving funds under this Agreement, to review activities under this Agreement and the adequacy of the Grantee's monitoring efforts.

ARTICLE 3
PERFORMANCE REQUIREMENTS

Section 3.1 The Grantee will complete the Work described in Article 1, Section 1.1 within the time period and the budget detailed in the final Project Scope, Project Budget, and Project Schedule as specified in Article 2, Section 2.1. Project benefit will be fully achieved upon the completion of the construction of the Project and initiation of operations.

ARTICLE 4
SPECIAL CONDITIONS

Section 4.1 Where the Grantee is acting as overall Project Manager, its employees' payroll and indirect costs may be charged directly to the Project. The Department will approve the employees and their rates and surcharges if the Grantee charges such costs to the Project.

Section 4.2 Where applicable and notwithstanding any other provision in this Agreement, the Grantee hereby agrees to provide or have provided continuous maintenance in accordance with

the Grantee's standards (as informed by AREMA recommended practices) and, as between the Grantee and the Department, to assume all liability in connection with the implementation and operation of the Project.

Section 4.3 All funds granted under this Agreement shall be expended by the Grantee in accordance with the Department's standard procurement procedures, applicable Virginia law, and accepted good business practices. All plans, specifications, estimates of costs, award of contracts, performance and acceptance of the Work, and procedures in general are subject at all times to all applicable laws, rules, regulations, and orders.

Section 4.4 Notwithstanding any other provision in this Agreement, funding provided pursuant to this Agreement shall be for the reimbursement of Eligible Project Costs and for no other purpose. All purchases made as a matter of this Agreement shall be charged at the actual cost(s) to the Grantee with no markups.

ARTICLE 5
REIMBURSEMENT OF GRANTEE

Section 5.1 The Grantee shall render invoices no more frequently than once every 30 calendar days for reimbursement of Eligible Project Costs. Each invoice must reflect the percentage of financial participation agreed to by the Department and the Grantee in Article 1.

Section 5.2 Invoices shall be submitted using the form provided as Attachment B of this Agreement. Upon approval by the Department for payment, invoices will be paid within 30 calendar days. Invoices shall be accompanied by the most recent Monthly Progress Report.

Section 5.3 Invoices or line item(s) in invoices not found to be complete as to form or in accordance to the provisions of this Agreement will be separated and a partial payment may be made by the Department on eligible reimbursable expenditures upon approval by the Department.

Section 5.4 The Department shall have the right to request an accounting or more detailed statement of invoices. Upon such a request, the Grantee shall provide the requested information within 30 calendar days.

Section 5.5 Any items of Work reimbursed to the Grantee by the Department and found not to be in accordance with the agreed Work or any applicable federal, state, or local law by the Department in its final audits will be repaid to the Department by the Grantee within 60 calendars days upon submission of the items so disapproved.

Section 5.6 The Grantee is responsible for payment of all contractors. The Grantee shall attach to each invoice copies of contractor's paid invoices.

ARTICLE 6
COMPLETION AND ACCEPTANCE

Section 6.1 Upon completion of the Work, the Grantee shall certify in writing that the Work has been completed.

Section 6.2 The Department shall have 60 calendar days after Grantee's certification of completion of the Work in which to reject any portion of the Work. Any such rejection by the Department shall be sent to the Grantee in writing.

Section 6.3 Final billing for reimbursement shall be provided to the Department within 60 calendar days after Grantee's certification of completion. If Work is accepted by the Department, the final invoice shall be paid as described in Article 5.

Section 6.4 Sixty calendar days after payment of the Final Project invoice, the Department will withdraw any remaining Commonwealth funds as outlined in Article 9.

Section 6.5 Acceptance of the Work by the Department shall not be construed to inure to the benefit of any third parties or create any additional liability to the Commonwealth, as between the Grantee and the Commonwealth, nor does it relieve the Grantee of its liability under this Agreement.

Section 6.6 Any work necessary in connection with the project, which is not specifically provided for as Work by this Agreement, including but not limited to Re-work, shall be the responsibility of the Grantee.

ARTICLE 7
INTEREST IN COMPLETED WORK

Section 7.1 The parties acknowledge and agree that the Department shall have an ownership interest in the completed Work, and that its approval must be given before any portion of the Work or its results are shared with any other person or entity beyond the Grantee. The Grantee agrees to supply six hard copies and one electronic copy of the completed Work to the Department. For purposes of this Agreement, the value of that interest shall be the value of the payments made by the Department to the Grantee as of the time of acceptance of the Project by the Department.

ARTICLE 8
SMALL, WOMEN, AND MINORITY (SWAM)

Section 8.1 The Grantee is encouraged to seek and use Small, Women, and Minority (SWAM) enterprises in relation to this Agreement. A SWAM reporting goal of forty percent of total eligible grant expenditures is established by execution of this Agreement by the parties. The Grantee must report such SWAM activity quarterly beginning at the end of the first three month period from date of Agreement and ending upon the quarter that the last payment to the

Grantee by the Department is made. The Grantee shall use the reporting form provided in Attachment D and include documentation of efforts to achieve the SWaM goal.

ARTICLE 9
TERMINATION

Section 9.1 The Grantee may terminate the Project at any time by notifying the Department in writing 30 calendar days in advance. If such termination occurs, the Grantee shall repay the Department for all funds received according to the provisions of this Article.

Section 9.2 The Grantee may terminate the Agreement at any time it is determined by Virginia law that the Department has materially breached this Agreement and has failed to cure such breach within 90 calendar days. Should such occur, the Grantee shall be entitled to whatever remedies may be provided for by law or in equity. Furthermore, the Grantee will not be required to repay any funds that have been provided by Department pursuant to this Agreement.

Section 9.3 Upon 30 calendar days' notice to the Grantee, the Department may terminate, in whole or in part, the funding under this Agreement at any time it is determined that Grantee has materially breached this Agreement and has failed to cure said breach after 90 calendar days notice or if compliance within 90 calendar days is not reasonable as solely determined by the Department, then within such time period as the Department may agree.

The Department shall notify the Grantee promptly in writing of such a determination and the effective date of the termination. The Grantee may request reconsideration by notifying the Department within 30 calendar days of the date of the Department's notification. The Department shall not terminate funding until after the request has been reconsidered but may withhold funds in the interim. Following reconsideration, if requested, the decision of the Department will be final. If this Agreement is terminated by the Department for the Grantee's material breach, the Grantee will repay the Department all funds received for the Project. Such payment shall be made within 60 calendar days following notification by the Department of the amount to be repaid.

Section 9.4 Upon 30 calendar days' notice to the Grantee, the Department may terminate, in whole or in part, the funding under this Agreement at any time if (1) the Department fails to secure the necessary budgetary appropriation to fulfill its obligations under this Agreement, (2) the Grantee becomes insolvent, (3) the Grantee fails to apply provided funds as intended under this Agreement, or (4) statutory changes affecting the Program under which these funds were provided render funding with this Agreement impossible. The Department shall notify the Grantee promptly in writing of such a determination and the effective date of the termination. The Grantee may request reconsideration by notifying the Department within 30 calendar days of the date of the Department's notification. The Department shall not terminate funding until after the request has been reconsidered but may withhold funds in the interim. Following reconsideration, if requested, the decision of the Department will be final.

Section 9.5 Should the Project be terminated by Department as a result of lack of funds or statutory changes, the Department will exercise best efforts to seek funds to be used to defray costs of shutting down and the Grantee need not repay any funds already paid to the Grantee if

such funds represent eligible Project Costs that the Grantee has incurred. The Grantee shall repay the Department for all funds paid associated with this Agreement should the Grantee become insolvent or fails to apply funds as intended under this Agreement.

Section 9.6 Delays caused by Force Majeure events during construction shall not be deemed a breach or default under this Agreement. Upon the occasion of a Force Majeure event, as determined by the Department, which makes it impossible for the Project to be constructed and/or moots the need for the Project, the Department may terminate this Agreement at its discretion. Force Majeure events occurring during the performance period of this Agreement will automatically result in day-for-day extension(s) to the performance period specified in this Agreement.

Section 9.7 All reimbursement of the Department for funds granted by the Department under any Article of this Agreement shall also require the payment of interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly, calculated from the date payment is made by the Department to date of repayment by the Grantee. This section shall be binding on the Grantee's successors and assigns.

ARTICLE 10
ASSIGNMENT

Section 10.1 Assignment of any portion of this Agreement shall have the prior written approval of Department.

ARTICLE 11
TERM, ENTIRE AGREEMENT, AND AMENDMENT

Section 11.1 This Agreement shall be effective immediately upon its execution.

Section 11.2 This Agreement constitutes the entire and exclusive agreement between the parties relating to all specific matters covered herein. All prior or contemporaneous verbal or written agreements, understandings, representations, and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose.

Section 11.3 This Agreement may be altered, amended, or revoked only by an instrument in writing signed by the parties.

ARTICLE 12
NOTICES AND DESIGNATED REPRESENTATIVE

Section 12.1 All notices or communications with respect to this Agreement, shall be in writing and shall be deemed delivered upon delivery by hand, upon the next business day if sent prepaid overnight delivery service, or on the third business day following mailing by U.S. Mail, certified, postage prepaid, return receipt requested, to the addresses set forth below or such other addresses as may be specified by delivery of prior notice by a party to the other parties.

Department: Virginia Department of Rail and Public Transportation
1313 East Main Street, Suite 300
P.O. Box 590
Richmond, VA 23218-0590
Attention: William S. Pittard, Chief Financial Officer
steve.pittard@drpt.virginia.gov

Kevin B. Page, Chief of Rail Transportation
Virginia Department of Rail and Public Transportation
1313 East Main Street, Suite 300
P.O. Box 590
Richmond, VA 23218-0590
kevin.page@drpt.virginia.gov

Nancy C. Auth, Senior Assistant Attorney General
Office of the Attorney General
900 East Main Street
Richmond, VA 23219
nauth@oag.state.va.us

Grantee: *Grantee Contact Information*

With a copy to:
Grantee Contact Information

Designated Representative: Kevin B. Page, Chief of Rail Transportation
Virginia Department of Rail and Public Transportation
1313 East Main Street, Suite 300
P.O. Box 590
Richmond, VA 23218-0590
kevin.page@drpt.virginia.gov

Grantee Contact Information

ARTICLE 13
NON-DISCRIMINATION

Section 13.1 In the solicitation or awarding of any contracts directly related to this Agreement, the Grantee shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by Virginia state law relating to discrimination in employment.

Section 13.2 During the performance of this Agreement, the Grantee agrees as follows: (a) the Grantee will not discriminate against any employee or applicant for employment because of race,

religion, color, sex, national origin, age, disability, or other basis prohibited by Virginia law relating to discrimination in employment. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; (b) the Grantee, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, will state that the Grantee, where applicable, is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

ARTICLE 14
MISCELLANEOUS PROVISIONS

Section 14.1 The Grantee agrees that its plans will incorporate statewide plans or projects that support freight and/or passenger rail growth or to make every reasonable attempt in its designs not to preclude specified statewide passenger and or freight projects in the future.

Section 14.2 The Grantee shall at all times observe and comply with all federal, state and local laws, regulations, ordinances, orders and decrees applicable to the Work or subsequent operation. The obligations of this section shall survive the termination or completion of this Agreement.

Section 14.3 Data or information provided by the Grantee to the Department that is protected under federal or state law, or otherwise deemed by the Grantee and the Department as proprietary, will be so and marked by the Grantee on each document prior to its submission. The Department shall hold and protect said documents identified as proprietary in accordance to law. For the purposes of this Agreement, proprietary items are so specified in Attachment E.

Section 14.4 The Grantee shall maintain all books, documents, papers, accounting records, and any other evidence, showing actual time devoted and supporting the cost incurred. Such books, documents, papers, accounting records, etc. shall be kept in accordance with commonly accepted business accounting procedures. Such information shall be made available at their respective offices at all reasonable times during the Agreement period and for a period of five years from the date of final payment by the Department to the Grantee for audit and inspection. Copies of such information shall be furnished to the Department upon request. The Department shall have the absolute right to audit to determine compliance with the terms of this Agreement.

Section 14.5 The Grantee shall be responsible for all damage to life and property due to its activities and those of its subcontractors, agents or employees, in connection with the Work performed under this Agreement. In the event that the Grantee obtains insurance to cover this risk, the Commonwealth of Virginia, the Department, the Virginia Department of Transportation, and the officers or agents and employees of these entities shall be listed as additional insureds. Acceptance of the Work by the Department shall not waive any of the rights of the Department contained in this section nor release the Grantee from any responsibilities or duties contained in this Agreement. Further, it is expressly understood that the Grantee shall indemnify, defend and hold harmless the Commonwealth of Virginia, the Department of Rail and Public Transportation, the Virginia Department of Transportation, its officers, agents, and employees from and against all damages, claims, suits, judgments, expenses, actions and costs of every name and description, arising out of or resulting from any negligent act or omission in the performance by the Grantee or its subcontractors of the Work covered by this Agreement and, if applicable the subsequent

operation of rail service over this Project. The obligations of this section shall survive the termination or completion of this Agreement.

Section 14.6 During the performance of this Agreement, the Grantee agrees to (a) provide a drug-free workplace for its employees; (b) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (c) state in all solicitations or advertisements for employees placed by or on behalf of the Grantee that the Grantee maintains a drug-free workplace; and (d) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

Section 14.7 No member, officer, or employee of the Department, during his tenure or thereafter, shall have any interest, direct or indirect, in this Agreement.

Section 14.8 This Agreement shall, in all respects, be governed by the laws of the Commonwealth of Virginia.

Section 14.9 If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable, it shall not affect the legality or validity or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be binding upon the parties to this Agreement.

Section 14.10 This Agreement, when properly executed, shall be binding upon the parties hereto and their respective successors and assigns.

ARTICLE 15
ILLEGAL ALIENS

Section 15.1 The Grantee certifies that it does not, and that it and its contractors shall not, during the performance of this contract knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986 (the Act). Unauthorized alien means, with respect to the employment of an alien (which is defined as any person not a citizen or national of the United States), at a particular time, that the alien is not at that time either (a) an alien lawfully admitted for permanent residence, or (b) authorized to be so employed by the Act or by the United States Attorney General.

This area intentionally blank

IN TESTIMONY THEREOF, the parties have caused this Agreement to be executed, each by its duly authorized officers, all as of the day, month, and year hereinabove first written.

COMMONWEALTH OF VIRGINIA
Department of Rail and Public Transportation

_____ BY: _____
WITNESS *(Director's Name Here)*
Director

Seal *Grantee Name*

_____ BY: _____
WITNESS

NAME: _____

TITLE: _____

Attachment A – Sample Monthly Progress Report

Progress Report

Date: ___/___/___

DRPT Project: Number: _____
Grantee Project: _____
Project Type:
New Construction___ Rehabilitation ___
Study ___ Rail Infrastructure ___
Equipment/Rolling Stock ___
Signals/Communication ___
Other: ___

Reporting Period Range: ___/___/___ thru ___/___/___

Commonwealth Project Funding:

Total Funds Allocated $
Total Funds Spent: $
Project Fund Balance: $

Percent Spent to date: ___%

Minority Business participation this period: Yes ___ No ___
Amount spent this period: $
Total amount spent: $

Schedule

Project is on schedule: ___ Project is not on schedule: ___

Project is ≤ 5% behind schedule ___
Project is > 5% behind schedule ___
Project is > 10% behind schedule ___

Percent Project Complete: ___%

Response plan:

Milestones Completed

- Scoping ___/___/___
- Construction or Study ___/___/___

Project Issue(s) and Update Narrative:

1.

Submitted by: _____ Date: _____

Attachment B – Sample Project Invoice Page 1

			DRPT Voucher:	
Department of Rail and Public Transportation				
Invoice and Authorization Form				
Organization Name:	**Grantee**			
EIN:	########-##			
			Invoice Date	DD-MM-YYYY
			Invoice #	**1**
New Address, If applicable				
Project Agreement Name:	**Project Name**			
Project Number:				
	Federal	**State**	**Local**	**Total**
Total Contract Amount	**$ -**	**$0**	**$0**	**$ -**
Total of Previous Payments	$ -	$ -	$ -	$ -
Total Expended This Period	**$ -**	**$ -**	$ -	$ -
Balance Remaining After This Invoice	$ -	$ -	$ -	$ -
Total Reimbursable Amt for this Invoice	**$ -**			
I certify that the grantee agency has incurred expenses in accordance with the project				
agreement and that these funds have not been previously requested.				
Grantee Authorized Signature		Title		
Note: Percentage calculations are rounded to the nearest dollar.				
THIS AREA FOR DRPT USE ONLY:				
Grant Manager Signature		Date		
	Kevin Page			
Check here to close project after this request.				
Form# DRPT06302003F				

Attachment B – Sample Project Invoice Page 2

Payment Number	Total Expended This Period	Date of Request	Previous Total
1			$0.00
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Attachment C – Example Letter of No Prejudice

Month Day, Year

Name
Title
Railroad Name
Railroad Address Line 1
Railroad Address Line 2

Re: *Project Name*
Letter of No Prejudice

Dear *Name*:

The Department of Rail and Public Transportation (DRPT) is in receipt of your letter dated *Month Day, Year* in which you requested a Letter of No Prejudice to proceed with the *Project Description*.

Total project costs of $*Amount* will be shared at *Percent*% DRPT Rail Enhancement funds of $*Amount* and *Percent*% *Railroad Name* funds of $ *Amount*.

Although the pre-agreement has not been concluded nor the grant agreement executed, the importance of the timing of this project dictates that work begin. Accordingly, you are hereby authorized to begin incurring expenses towards this Project, pending the execution of a project agreement. Eligible expenses incurred towards this project will be eligible for reimbursement when a project agreement is executed between *Railroad Name* and DRPT. However, if for some reason an agreement is not executed, then DRPT has no obligation to reimburse any expense that may have been incurred. All expense will be subject to audit and reporting requirements, which will be described in the project agreement.

Members of my staff are currently working with the Office of the Attorney General to develop a project agreement which will include all of the conditions and requirements of the grant program. DRPT anticipates providing the project agreement to you within the next 30 days.

Sincerely,

(Name of Director Here)
Director

C: Kevin B. Page

Attachment D - SWAM Certification

SWAM Code Section

§ 2.2-4310. Discrimination prohibited; participation of small, women- and minority-owned business.
A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Minority Business Enterprise.
B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein. State agencies shall submit annual progress reports on small, women- and minority-owned business procurement to the Department of Minority Business Enterprise in a form specified by the Department of Minority Business Enterprise.
C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial measures consistent with prevailing law.
D. In the solicitation or awarding of contracts, no state agency, department or institution shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest.
E. As used in this section:
"Minority individual" means an individual who is a citizen of the United States or a non-citizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:
1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.
2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.
3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.
4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

"Minority-owned business" means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.

"Small business" means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of $10 million or less averaged over the previous three years.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

"Women-owned business" means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law.

SWAM Reporting Form

Grantee Quarterly SWAM Expenditure Report

Fiscal Year 20XX Quarter 1st From Date of Agreement

Agreement Date: _____

Grantee Name: _____
Grant Type: **Rail Enhancement FY20XX**
Name of Contact Person: _____
Title of Contact Person: _____
Phone number: _____
Email address: _____

Report only dollars of actual payments to vendors or expenditures of eligible Grantee force work, provided that Grantee.

I. Table A: Total DRPT Grant Expenditures And SWAM Prime Contracting & Purchasing Expenditures

SWAM PRIME CONTRACTING & PURCHASING EXPENDITURES: The amount spent with DMBE certified SWAM businesses OR eligible Grantee work force, provided Grantee is a SWAM, for work directly traceable to the fulfillment of a Grantee's contract or purchase order.

A. Total DRPT Grant Expenditures	B. Total Expenditures with Certified MBE	C. Total Expenditures with Certified WBE	D. Total Expenditures with Certified SBE
$	$	$	$

(MBE) Minority Business Enterprise, (WBE) Women-owned Business Enterprise, (SBE) Small Business Enterprise

Percentage of SWAM participation for this report period. (B+C+D)/A=_____

II. Table B: SWAM Contracting Expenditure Worksheet

List below the names of contractors, Federal Tax IDs, SWAM designation, Contract Number, and payment amounts to the contractor

Name of Contractor	Federal Tax ID	MBE, WBE or SBE	Description of Work	Contract NO/PO	Dollar Amount
Total Expenditures					

Completed forms must be submitted to:

Department of Rail and Public Transportation
Attention: Chief of Rail Transportation
1313 East Main Street
P.O. Box 590
Richmond, VA 23219

Developed by DRPT October 2007 from DMBE Supplier Diversity Expenditure Report: Revised December 5, 2005

Attachment E - List of Grantee's Proprietary Items

C-2 Sample Standard Agreement for Construction Grants – Rail Enhancement Fund
Subject to review and agreement by all parties
COMMONWEALTH OF VIRGINIA
DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

RAIL ENHANCEMENT FUNDING AGREEMENT

GRANTEE: ***insert name of Grantee***
PROJECT: ***insert name of Project***

AGREEMENT NUMBER: ***Number***

APPLICATION NUMBER: ***Number***

RAIL ENHANCEMENT FUNDING AGREEMENT

Agreement Number: *Number*

THIS RAIL ENHANCEMENT FUNDING AGREEMENT, hereinafter referred to as "Agreement," is made and executed as of the _____day of _____, 200_ between the Virginia Department of Rail and Public Transportation, hereinafter referred to as the "Department," acting by and through its Director, and the *insert name of Grantee*, hereinafter referred to as the "Grantee."

RECITALS

WHEREAS, Grantee proposes *insert general description of project* (the "Project"); and,

WHEREAS, the Director of the Department consulted with the Rail Advisory Board on *insert date* to obtain their advice and recommendations concerning funding the Project; and

WHEREAS, in accordance with §33.1-221.1:1.1 and §58.1-2425 of the Code of Virginia (1950), as amended, the Commonwealth Transportation Board (CTB), on *insert date of CTB approval,* approved funding for said Project, and determined the Project is for the common good of a region of the Commonwealth or the Commonwealth as a whole and that the Project will result in public benefits to the Commonwealth or to a region of the Commonwealth that are equal to or greater than the investment of funds; and

WHEREAS, it is desired by the parties hereto to define the extent of the Project addressed herein, the responsibilities of each party, the manner of performing the necessary work, the method and time of payment, and to set out additional conditions associated with the Project; and

(*optional*) WHEREAS, *insert here any additional factual information necessary to the contract*; and

WHEREAS, the parties desire to procure the Project for the lowest possible amount.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, it is agreed and bound between the parties hereto as follows:

DEFINITIONS

Container means a standardized intermodal freight cargo unit that can be loaded onto ships, railroad cars, and trucks. There are several different common standard lengths and heights, with approximate dimensions of 40 to 53 feet in length and 8.5 to 9.5 feet in height.

Contractor(s) means private contractor(s), including consultants, which may be engaged by Grantee to perform the Work.

Designated Representative(s) means a person or persons appointed by the Grantee or the Department to represent, in whole or in part, the party in issues associated with the Work or this Agreement.

Eligible Project Costs means a cost directly associated with the Work.

Force Majeure Event(s) means fire, flood, war, rebellion, riots, strikes, or acts of God, which may effect or prevent either party from timely or properly performing its obligations under this Agreement.

Grantee Contribution means, for the purpose of the statutory match for this project, a contribution of at least 30 percent cash or in-kind matching contribution from a private source, which may include a railroad, a regional authority, or a local government source, or a combination of such sources of total Project costs.

Intermodal Unit means a Container or semi-truck trailer (counted as a Container for purposes of Attachment A) moved on at least part of its trip by railcar.

Monthly Progress Report means a monthly written progress report including any changes or updates to the Project Schedule, Budget, and information as provided in Attachment C.

Notice to Proceed means written notice issued by the Department authorizing the Grantee to commence a particular portion of the Work.

Performance Period means the specified period beginning with the first complete calendar year after acceptance of the Work by the Department.

Project Benefit means the public benefit provided by the project for the Commonwealth of Virginia.

Project Budget means the budget for the Work in single or multiple years as broken into total costs, the Department and the Grantee participation and any subsequent amendments thereto.

Project Invoice Form means the form provided by the Department to the Grantee to use for submission for reimbursement of Eligible Project Costs incurred and paid by the Grantee.

Project Schedule means the schedule for completing the Work as agreed to by the parties and any subsequent amendments thereto.

Re-work means work required to correct deficiencies in the Project brought about by incomplete work, incorrect work, failure to comply with the provisions of this Agreement or state or federal regulations.

Work means any and all tasks, duties, obligations, services, requirements, and activities of whatever kind or nature, express or implied, direct or incidental, to be performed, and all items tangible and intangible, to be provided by the Grantee as defined as part of this Agreement.

ARTICLE 1
SCOPE OF WORK, BUDGET, AND MILESTONE SCHEDULE

Section 1.1 The Work under the terms of this Agreement is described as follows: *insert description of Project*

Section 1.2 The initial Project Budget and milestone schedule as an estimate at date of Agreement is as follows:

Total Project Budget	$ *insert figure*
Maximum Commonwealth Participation:	$ *insert figure*
Participation by the Grantee at a minimum of 30 percent of Project Budget:	$ *insert figure*

It is agreed that the maximum funding for reimbursement by the Department as provided for in its Fiscal Year 200_ Program of Projects shall be as follows:

Fiscal Year 20__ *insert fiscal year dates*	$ *insert figure*
Maximum Commonwealth Participation:	$ *insert figure*
Participation by the Grantee at a minimum of 30 percent Project Budget:	$ *insert figure*

Milestone Schedule Description	Date of Milestone
Milestone dates are estimates only and there shall be no penalty for non-compliance	
Planning, Design, and Engineering Completion	*insert date*
Construction Start Date	*insert date*
Construction Completion Date	*insert date*
Project Acceptance by Commonwealth	*insert date*
Performance Period Start Date	*insert date*
Performance Period Completion Date	*insert date*
Project Closeout Date	*insert date*

Amounts not spent in Fiscal Year 20__*insert date* shall be carried over into subsequent years, so that the entire $ *insert figure* is available for reimbursement for Eligible Project Costs during the life of the Project. It is understood by the parties that the initial Project Budget as stated above is an estimate as of the date of contracting only, and may be lower or higher by the time of construction and/or completion of construction. The Grantee acknowledges that the Commonwealth's share of the Project Cost cannot exceed the amount allocated by the CTB. Pursuant to Section 2.1, the Project Budget and Project Schedule has been reviewed and approved by the Department.

Section 1.3 The Grantee is responsible for constructing or having the Project proposed under the application constructed. In the event that the Grantee is not performing the work as described in Section 1.1, the plans and specifications being performed by others shall be approved by the Grantee and the Department.

Section 1.4 In the event that the Grantee receives subsequent allocation(s) of state funding from another source or federal funding applicable to this Project, the allocation(s) set forth herein from the Rail Enhancement Fund shall be reduced by the amount of the subsequent allocation(s).

Section 1.5 Any cost of completing the Work in excess of the Project Budget shall be the responsibility of the Grantee. However, the Grantee has the right to revise the plans and/or specifications of the Work at its discretion so that total Project costs do not exceed the Project Budget provided that the Work is completed as described in Article 1. Project Benefit pursuant to this Agreement shall remain unchanged by changes to the plans or specifications of the Work.

Section 1.6 A Monthly Progress Report including any changes or updates to the Project Budget and Schedule, and information as provided will be submitted to the Department. The Report will make particular reference to progress towards completing milestones contained in the Progress Schedule. A sample Monthly Progress Report with required information in addition to the Project Budget and Schedule submission is provided in Attachment C.

Section 1.7 Funding availability is subject to annual appropriation by the General Assembly and allocation by the Commonwealth Transportation Board.

ARTICLE 2
PLANNING, DESIGN, ENGINEERING, AND CONSTRUCTION

Section 2.1 Execution of this Agreement shall be deemed to consummate the Conditional Notice to Proceed dated *insert date* granted by the Department for the Work described in Section 1.1.A. The Conditional Notice to Proceed is attached as Attachment F. The cost of any preliminary engineering, design, or order of any material for the Work from *insert date* to the date of this Agreement is considered an Eligible Project Cost and is eligible for reimbursement under the terms of this Agreement. The Department has provided written approval of the Project Scope, Project Budget and Milestone Schedule. The Department's approval does not make any warranty as to the accuracy or suitability of the information submitted, nor does it relieve the Grantee of any liability under this Agreement. Such submissions provided shall contain the approval of the Grantee in those situations where the submitter is not the Grantee.

Section 2.2 The Grantee shall not commence the Work described in Article 1 until the Department has issued in writing a Notice to Proceed for this Work. Prior to issuing the Notice(s) to Proceed, the Grantee must submit a Scope of Work, Project Budget, and a Milestone Schedule for each part of the work to the Department for approval. The Estimated and a Final Project Budget and Project Schedule shall be attached to this Agreement.

Section 2.3. Notwithstanding Section 2.1, in the event the Grantee desires to perform preliminary engineering, design, or order any material for the Work prior to receiving Notices to Proceed from the Department, the Grantee shall formally request a Letter of No Prejudice from the Department, in which an example letter is provided in Attachment E. The costs for such preliminary engineering, design, or material will only be considered Eligible Project Costs if the costs are incurred after issuance of the Department's Letter of No Prejudice and upon the issuance of Notices to Proceed. However, nothing shall obligate the Department to reimburse the Grantee for any portion of the cost of such design or material in the absence of the Department's Letter of No Prejudice or Notices to Proceed.

Section 2.4 The Department reserves the right to reject any Plans, Specifications, Project Budget or Project Schedule because the Department's own analysis reveals that significant cost or schedule savings could be achieved through other contracting means than Grantee proposes, and meet the Grantee's performance and/or Project requirements.

Section 2.5 The Grantee shall design and construct according to the most recently approved Project Budget and Project Schedule.

Section 2.6 Notwithstanding any other provision in this Agreement, the Grantee shall inspect or shall have inspected the Work to:

C. Ensure that it complies with the contract specifications;

D. Verify quantitative measures of materials installed, such as tie counts; and

E. Verify labor and materials charges for contracts providing for payment on an actual cost basis.

Section 2.7 Notwithstanding any other provision in this Agreement, if the Grantee, the Department, or inspectors duly authorized to uphold applicable federal, state, and local laws regarding construction and operating practices, determines that any material or construction is not in accordance with the Grantee's standards as informed by the American Railway Engineer and Maintenance of Way Association (AREMA), or any applicable federal, state, or local law, the Grantee shall replace materials or correct any workmanship necessary to cure the deficiency. The Grantee shall not use any funds provided under this Agreement to pay for a replacement or correction required under this subsection.

Section 2.8 Notwithstanding any other provision in this Agreement, the Department may take any action, including the inspection of the Project site and all books and records of the Grantee, any Contractor or subcontractor, relating to any project or task receiving funds under this

Agreement, to review activities under this Agreement and the adequacy of the Grantee's monitoring efforts.

Section 2.9 Notwithstanding any other provision in this Agreement, the Department shall have access to the Project at all times to inspect and to protect its interest in the Project. The Department representatives will not enter the Grantee's right-of-way without the Grantee's representatives available to provide any necessary protection from train movements. The Department's representatives will comply with all safety rules and regulations of the Grantee, and safety instructions from the Grantee's representatives. The Department and any of its agents who perform inspections shall execute the Grantee's standard form right of entry prior to entry on the Grantee's property at no cost to the Department.

ARTICLE 3
PERFORMANCE REQUIREMENTS

Section 3.1 Project Benefit for the Work described in Article 1 shall be *insert description*, per the Grantee's application dated *insert date*. Annual Project Benefit levels for the Work described in Article 1 throughout the Performance Period of *insert number of years* are detailed in Attachment A.

Section 3.2 Notwithstanding any other provision in this Agreement, commencing with the Performance Period, the Grantee shall submit monthly, in writing or electronically, to the Department a non-auditable report detailing the Grantee's performance relative to the Project Benefit levels detailed in Attachment A. The purpose of this section is solely to assist the Department in reporting benefits achieved as a result of the Rail Enhancement Fund and to assist the Department in reporting performance trends in the Commonwealth. The Grantee shall submit the non-auditable monthly report until such a time that the Department notifies the Grantee in writing that such submission is no longer required.

Section 3.3 Upon Project acceptance as provided for in Article 6 of this Agreement, and throughout the Performance Period, the Grantee shall report annually to the Department its auditable performance relative to the Project Benefit levels detailed in Attachment A. All efforts related to reporting Project Benefit performance under this Article shall be at the Grantee's expense.

Section 3.4 Failure by the Grantee to meet the Project Benefit, shall entitle the Department to reimbursement as prorated over the Performance Period based on the percentage of the Project Benefit not achieved plus interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly calculated from the date when payment is made by the Department to date of payment of any reimbursement amount, as described in Attachment A. Force Majeure event(s) occurring after project acceptance and throughout the Performance Period will automatically extend the Performance Period provided in this Agreement commensurate with the length of delay caused by the Force Majeure event(s), and such length of delay and extension of the Performance Period will be determined and agreed to in writing by both parties.

Section 3.5 In no event shall reimbursement, as defined in this Article, exceed the sums granted by the Department to Grantee under this Agreement as per Attachment A plus interest

using the prevailing statutory legal rate of interest established by the Virginia General Assembly calculated from the date when payment is made by the Department to date of payment of any reimbursement amount.

ARTICLE 4
SPECIAL CONDITIONS

Section 4.1 Where the Grantee is acting as overall Project Manager, said employees payroll and indirect costs may be charged directly to the Project. The Department will approve the employees and their rates and surcharges if the Grantee charges such costs to the Project.

Section 4.2 Where applicable and notwithstanding any other provision in this Agreement, the Grantee hereby agrees to provide or have provided continuous maintenance in accordance with the Grantee's standards (as informed by AREMA recommended practices) and, as between the Grantee and the Department, to assume all liability in connection with the implementation and operation of the Project.

Section 4.3 All funds granted under this Agreement shall be expended by the Grantee in accordance with the Department's standard procurement procedures, applicable Virginia law, and accepted good business practices. All plans, specifications, estimates of costs, award of contracts, performance and acceptance of work, and procedures in general are subject at all times to all applicable laws, rules, regulations, and orders.

Section 4.4 Notwithstanding any other provision in this Agreement, funding provided pursuant to this Agreement shall be for the reimbursement of Eligible Project Costs and for no other purpose. All purchases made as a matter of this Agreement shall be charged at the actual cost(s) to the Grantee with no markups.

ARTICLE 5
REIMBURSEMENT OF GRANTEE

Section 5.1 The Grantee shall render invoices no more frequently than once every 30 calendar days for reimbursement of Eligible Project Costs. Each invoice must reflect the percentage of financial participation agreed to by the Department and the Grantee in Article 1.

Section 5.2 Invoices shall be submitted using the form provided as Attachment B of this Agreement. Upon approval by the Department for payment, invoices will be paid within 30 calendar days. Invoices shall be accompanied by the most recent monthly progress report.

Section 5.3 Invoices or line item(s) in invoices not found to be complete as to form or in accordance to the provisions of this Agreement will be separated and a partial payment may be made by the Department on eligible reimbursable expenditures upon approval by the Department.

Section 5.4 The Department shall have the right to request an accounting or more detailed statement of invoices. Upon such a request, the Grantee shall provide the requested information within 30 calendar days.

Section 5.5 Any items of Work reimbursed to the Grantee by the Department and found not to be in accordance with the agreed Work or any applicable federal, state, or local law by the Department in its final audits will be repaid to the Department by the Grantee within 60 calendars days upon submission of the items so disapproved.

Section 5.6 The Grantee is responsible for payment of all contractors. The Grantee shall attach to each invoice copies of contractor's paid invoices.

ARTICLE 6
COMPLETION AND ACCEPTANCE

Section 6.1 Upon completion of the work, the Grantee shall certify in writing that the Work has been completed.

Section 6.2 The Department shall have 60 calendar days after Grantee's certification of completion of the Work in which to reject any portion of the Work. Any such rejection by the Department shall be sent to the Grantee in writing.

Section 6.3 If no rejection is sent by the Department within the 60 calendar days, the Performance Period begins the next January 1.

Section 6.4 Final billing for reimbursement shall be provided to the Department within 60 calendar days after Grantee's certification of completion. If Work is accepted by the Department, the final invoice shall be paid as described in Article 5.

Section 6.5 Sixty calendar days after payment of the Final Project invoice, the Department will withdraw any remaining Commonwealth funds as outlined in Article 9.

Section 6.6 Acceptance of the Work by the Department shall not be construed to inure to the benefit of any third parties or create any additional liability to the Commonwealth, as between the Grantee and the Commonwealth, nor does it relieve the Grantee of its liability under this Agreement.

Section 6.7 Any work necessary in connection with the project, which is not specifically provided for as Work by this Agreement, including but not limited to Re-work, shall be the responsibility of the Grantee.

ARTICLE 7
INTEREST IN COMPLETED WORK

Section 7.1 The parties acknowledge and agree that the Department has an interest in ensuring that the improvements created by the Project continue to be operated or used for their intended purpose for a period of ___*insert number* years after acceptance of the improvement by the Department. For purposes of this Agreement, the value of that interest shall be the value of the payments made by the Department to the Grantee with respect to that improvement less any reimbursement paid by the Grantee to the Department over the ___*insert number*-year Performance Period. This section shall be binding on Grantee's successors and assigns.

Section 7.2 The Grantee hereby certifies that it either owns, controls, or has executed an agreement to purchase or lease the real property upon which the Project will occur and will protect and respect the Department's interest in the Project. This section shall be binding on the Grantee's successors and assigns. The Grantee certifies that it has received approvals relative to easements and encroachments that occur as a result of this Project.

ARTICLE 8
SMALL, WOMEN, AND MINORITY (SWAM)

Section 8.1 The Grantee is encouraged to seek and use Small, Women, and Minority (SWAM) enterprises in relation to this Agreement. A SWAM reporting goal of forty percent of total eligible grant expenditures is established by execution of this Agreement by the parties. The Grantee must report such SWAM activity quarterly beginning at the end of the first three month period from date of Agreement and ending upon the quarter that the last payment to the Grantee by the Department is made. The Grantee shall use the reporting form provided in Attachment G and include documentation of efforts to achieve the SWAM goal.

ARTICLE 9
TERMINATION

Section 9.1 The Grantee may terminate the Project at any time by notifying the Department in writing 30 calendar days in advance. If such termination occurs, the Grantee shall repay the Department for all funds received according to the provisions of this Article.

Section 9.2 The Grantee may terminate the Agreement at any time it is determined by Virginia law that the Department has materially breached this Agreement and has failed to cure such breach within 90 calendar days. Should such occur, the Grantee shall be entitled to whatever remedies may be provided for by law or in equity. Furthermore, the Grantee will not be required to repay any funds that have been provided by Department pursuant to this Agreement.

Section 9.3 Upon 30 calendar days notice to the Grantee, the Department may terminate, in whole or in part, the funding under this Agreement at any time it is determined that Grantee has materially breached this Agreement and has failed to cure said breach after 90 calendar days notice or if compliance within 90 calendar days is not reasonable as solely determined by the Department, then within such time period as the Department may agree. This section excludes the failure to attain the final Project Benefit(s), which shall not be deemed material breaches entitling Department to terminate this Agreement, but shall entitle Department to repayment as set forth in Article 3.

The Department shall notify the Grantee promptly in writing of such a determination and the effective date of the termination. The Grantee may request reconsideration by notifying the Department within 30 calendar days of the date of the Department's notification. The Department shall not terminate funding until after the request has been reconsidered but may withhold funds in the interim. Following reconsideration, if requested, the decision of the Department will be final. If this Agreement is terminated by the Department for the Grantee's material breach, the Grantee will repay the Department all funds received for the Project. Such

payment shall be made within 60 calendar days following notification by the Department of the amount to be repaid.

Section 9.4 Upon 30 calendar days notice to the Grantee, the Department may terminate, in whole or in part, the funding under this Agreement at any time if (1) the Department fails to secure the necessary budgetary appropriation to fulfill its obligations under this Agreement, (2) the Grantee becomes insolvent, (3) the Grantee fails to apply provided funds as intended under this Agreement, or (4) statutory changes affecting the Program under which these funds were provided render funding with this Agreement impossible. Department shall notify the Grantee promptly in writing of such a determination and the effective date of the termination. The Grantee may request reconsideration by notifying the Department within 30 calendar days of the date of the Department's notification. The Department shall not terminate funding until after the request has been reconsidered but may withhold funds in the interim. Following reconsideration, if requested, the decision of the Department will be final.

Section 9.5 Should the Project be terminated by Department as a result of lack of funds or statutory changes, the Department will exercise best efforts to seek funds to be used to defray costs of shutting down and the Grantee need not repay any funds already paid to the Grantee if such funds represent eligible Project Costs that the Grantee has incurred. The Grantee shall repay the Department for all funds paid associated with this Agreement should the Grantee become insolvent or fails to apply funds as intended under this Agreement.

Section 9.6 Delays caused by Force Majeure events during construction shall not be deemed a breach or default under this Agreement. Upon the occasion of a Force Majeure event, as determined by the Department, which makes it impossible for the Project to be constructed and/or moots the need for the Project, the Department may terminate this Agreement at its discretion. Force Majeure events occurring during the performance period of this Agreement will automatically result in day-for-day extension(s) to the performance period specified in this Agreement.

Section 9.7 All reimbursement of the Department for funds granted by the Department under any Article of this Agreement shall also require the payment of interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly, calculated from the date payment is made by the Department to date of repayment by the Grantee. This section shall be binding on the Grantee's successors and assigns.

ARTICLE 10
ASSIGNMENT

Section 10.1 Assignment of any portion of this Agreement shall have the prior written approval of Department.

ARTICLE 11
TERM, ENTIRE AGREEMENT, AND AMENDMENT

Section 11.1 This Agreement shall be effective immediately upon its execution.

Section 11.2 This Agreement constitutes the entire and exclusive agreement between the parties relating to all specific matters covered herein. All prior or contemporaneous verbal or

written agreements, understandings, representations, and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose.

Section 11.3 This Agreement may be altered, amended, or revoked only by an instrument in writing signed by the parties.

ARTICLE 12
NOTICES AND DESIGNATED REPRESENTATIVE

Section 12.1 All notices or communications with respect to this Agreement, shall be in writing and shall be deemed delivered upon delivery by hand, upon the next business day if sent prepaid overnight delivery service, or on the third business day following mailing by U.S. Mail, certified, postage prepaid, return receipt requested, to the addresses set forth below or such other addresses as may be specified by delivery of prior notice by a party to the other parties.

Department:

Virginia Department of Rail and Public Transportation
1313 East Main Street, Suite 300
P.O. Box 590
Richmond, VA 23218-0590
Attention: William S. Pittard, Chief Financial Officer
steve.pittard@drpt.virginia.gov

Kevin B. Page, Chief of Rail Transportation
Virginia Department of Rail and Public Transportation
1313 East Main Street, Suite 300
P.O. Box 590
Richmond, VA 23218-0590
kevin.page@drpt.virginia.gov

Nancy C. Auth, Senior Assistant Attorney General
Office of Attorney General
900 East Main Street
Richmond, VA 23219
NAuth@oag.state.va.us

Grantee:

insert Grantee representative's name, title, address and email address

With a copy to:
insert Grantee representative's name, title, address and email address

Designated Representative:

Kevin B. Page, Chief of Rail Transportation
Virginia Department of Rail and Public Transportation
1313 East Main Street, Suite 300
P.O. Box 590
Richmond, VA 23218-0590

kevin.page@drpt.virginia.gov

insert Grantee representative's name, title, address and email address

ARTICLE 13
NON-DISCRIMINATION

Section 13.1 In the solicitation or awarding of any contracts directly related to this Agreement, the Grantee shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by Virginia state law relating to discrimination in employment.

Section 13.2 During the performance of this Agreement, the Grantee agrees as follows: (a) the Grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by Virginia law relating to discrimination in employment. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; (b) the Grantee, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, will state that the Grantee, where applicable, is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

ARTICLE 14
MISCELLANEOUS PROVISIONS

Section 14.1 The Grantee agrees that its plans will incorporate statewide plans or projects that support freight and/or passenger rail growth or to make every reasonable attempt in its designs not to preclude specified statewide passenger and or freight projects in the future. In executing this agreement, the Grantee has specifically provided for *(Insert Here)*.

Section 14.2 The Grantee shall at all times observe and comply with all federal, state and local laws, regulations, ordinances, orders and decrees applicable to the work or subsequent operation. The obligations of this section shall survive the termination or completion of this Agreement.

Section 14.3 Data or information provided by the Grantee to the Department that is protected under federal or state law, or otherwise deemed by the Grantee and the Department as proprietary, will be so and marked by the Grantee on each document prior to its submission. The Department shall hold and protect said documents identified as proprietary in accordance to law. For the purposes of this Agreement, proprietary items are so specified in Attachment D.

Section 14.4 The Grantee shall maintain all books, documents, papers, accounting records, and any other evidence, showing actual time devoted and supporting the cost incurred. Such books, documents, papers, accounting records, etc. shall be kept in accordance with commonly accepted business accounting procedures. Such information shall be made available at their respective offices at all reasonable times during the Agreement period and for a period of five years from

the date of final payment by the Department to the Grantee for audit and inspection. The Grantee shall maintain records of the performance levels reported to the Department for five years after the end of the Performance Period. Copies of such information shall be furnished to the Department upon request. The Department shall have the absolute right to audit to determine compliance with the terms of this Agreement.

Section 14.5 The Grantee shall be responsible for all damage to life and property due to its activities and those of its subcontractors, agents or employees, in connection with the work performed under this Agreement. In the event that the Grantee obtains insurance to cover this risk, the Commonwealth of Virginia, the Department, the Virginia Department of Transportation, and the officers or agents and employees of these entities shall be listed as additional insureds. Acceptance of the Work by the Department shall not waive any of the rights of the Department contained in this section nor release the Grantee from any responsibilities or duties contained in this Agreement. Further, it is expressly understood that the Grantee shall indemnify, defend and hold harmless the Commonwealth of Virginia, the Department of Rail and Public Transportation, the Virginia Department of Transportation, its officers, agents, and employees from and against all damages, claims, suits, judgments, expenses, actions and costs of every name and description, arising out of or resulting from any negligent act or omission in the performance by the Grantee or its subcontractors of the work covered by this Agreement and, if applicable the subsequent operation of rail service over this Project. The obligations of this section shall survive the termination or completion of this Agreement.

Section 14.6 During the performance of this Agreement, the Grantee agrees to (a) provide a drug-free workplace for its employees; (b) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (c) state in all solicitations or advertisements for employees placed by or on behalf of the Grantee that the Grantee maintains a drug-free workplace; and (d) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

Section 14.7 No member, officer, or employee of the Department, during his tenure or thereafter, shall have any interest, direct or indirect, in this Agreement.

Section 14.8 This Agreement shall, in all respects, be governed by the laws of the Commonwealth of Virginia.

Section 14.9 If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable, it shall not affect the legality or validity or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be binding upon the parties to this Agreement.

Section 14.10 This Agreement, when properly executed, shall be binding upon the parties hereto and their respective successors and assigns.

ARTICLE 15
ILLEGAL ALIENS

Section 15.1 The Grantee certifies that it does not, and that it and its contractors shall not, during the performance of this contract knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986 (the Act). Unauthorized alien means, with respect to the employment of an alien (which is defined as any person not a citizen or national of the United States), at a particular time, that the alien is not at that time either (a) an alien lawfully admitted for permanent residence, or (b) authorized to be so employed by the Act or by the United States Attorney General.

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IN TESTIMONY THEREOF, the parties have caused this Agreement to be executed, each by its duly authorized officers, all as of the day, month, and year hereinabove first written.

COMMONWEALTH OF VIRGINIA
Department of Rail and Public Transportation

_____ BY: _____
WITNESS *insert name of Director*
Director

insert name of Grantee

Seal

_____ BY: _____
WITNESS

NAME: _____

TITLE: _____

Attachment A: Performance Requirements

The counting of additional annual Intermodal Units commences with the first calendar year following acceptance of the Work by the Department.

In accordance with Section 3.4, interest shall be paid on the reimbursement amount using the prevailing statutory legal rate of interest established by the Virginia General Assembly calculated from the date when payment is made by the Department to the date of payment of the reimbursement amount.

Project Benefit shall be *describe the project*, per the Grantee's amended application dated *insert date*.

Performance will be reported annually and reimbursement to the Department will be computed at the end of the 15-year performance period *Refine definition according to project specifics*. Commencing with the Performance Period, the Grantee shall submit monthly, in writing or electronically, to the Department a non-auditable report detailing the Grantee's performance relative to the Project Benefit levels detailed in this Attachment. The purpose of this section is solely to assist the Department in reporting benefits achieved as a result of the Rail Enhancement Fund and to assist the Department in reporting performance trends in the Commonwealth. The Grantee shall submit the non-auditable monthly report until such a time that the Department notifies the Grantee in writing that such submission is no longer required. The final computation report at the end of the 15-year period will be the auditable report.

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Attachment A: Performance Requirements
Table for use in Calculating Reimbursement

A	B	C	D	E	F	G	H	I	J	K	L
Year	Baseline	New Commitment	Total Performance	Percent Of Total	Phase 1 IAF Final Costs to State	Performance Amount	Actual Total Performance Reported	Percent of Units Goal	Amount of Reimbursement	Annual Interest Rate	Total Recovery
			B+C	Year D/Total D		ExF		H/D	G-(GXI)		J+(JxK)
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											
11											
12											
13											
14											
15											
Total							*	*	*	*	*

* To Be Determined Through Performance Period Reporting Process

Attachment B – Sample Project Invoice Page 1

			DRPT Voucher:	
Department of Rail and Public Transportation				
Invoice and Authorization Form				
Organization Name:	**Grantee**			
EIN:	########-##			
			Invoice Date	DD-MM-YYYY
			Invoice #	**1**
New Address, If applicable				
Project Agreement Name:	**Project Name**			
Project Number:				
	Federal	**State**	**Local**	**Total**
Total Contract Amount	**$ -**	**$0**	**$0**	**$ -**
Total of Previous Payments	$ -	$ -	$ -	$ -
Total Expended This Period	**$ -**	**$ -**	$ -	$ -
Balance Remaining After This Invoice	$ -	$ -	$ -	$ -
Total Reimbursable Amt for this Invoice	**$ -**			
I certify that the grantee agency has incurred expenses in accordance with the project				
agreement and that these funds have not been previously requested.				
Grantee Authorized Signature		Title		
Note: Percentage calculations are rounded to the nearest dollar.				
THIS AREA FOR DRPT USE ONLY:				
Grant Manager Signature		Date		
	Kevin Page			
Check here to close project after this request.				
Form# DRPT06302003F				

Attachment B – Sample Project Invoice Page 2

Payment Number	Total Expended This Period	Date of Request	Previous Total
1			$0.00
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Attachment C – Sample Monthly Progress Report

Progress Report

Date: ___/___/___

DRPT Project: Number: _____
Grantee Project: _____
Project Type:
New Construction___ Rehabilitation ___
Study ___ Rail Infrastructure ___
Equipment/Rolling Stock ___
Signals/Communication ___
Other: ___

Reporting Period Range: ___/___/___ thru ___/___/___

Commonwealth Project Funding:

Total Funds Allocated $
Total Funds Spent: $
Project Fund Balance: $

Percent Spent to date: ___%

Minority Business participation this period: Yes ___ No ___
Amount spent this period: $
Total amount spent: $

Schedule

Project is on schedule: ___ Project is not on schedule: ___

Project is ≤ 5% behind schedule ___
Project is > 5% behind schedule ___
Project is > 10% behind schedule ___

Percent Project Complete: ___%

Response plan:

Milestones Completed

- Scoping ___/___/___
- Construction or Study ___/___/___

Project Issue(s) and Update Narrative:
2.

Submitted by: _____ Date: _____

Attachment D

Proprietary Items

(List Here)

Attachment E

Copy of Letter of No Prejudice to Proceed Dated *insert date*

Month Day, Year

Name
Title
Railroad Name
Railroad Address Line 1
Railroad Address Line 2

Re: *Project Name*
Letter of No Prejudice

Dear *Name*:

The Department of Rail and Public Transportation (DRPT) is in receipt of your letter dated *Month Day, Year* in which you requested a Letter of No Prejudice to proceed with the *Project Description*.

Total project costs of $*Amount* will be shared at *Percent*% DRPT Rail Enhancement funds of $*Amount* and *Percent*% *Railroad Name* funds of $ *Amount*.

Although the pre-agreement has not been concluded nor the grant agreement executed, the importance of the timing of this project dictates that work begin. Accordingly, you are hereby authorized to begin incurring expenses towards this Project, pending the execution of a project agreement. Eligible expenses incurred towards this project will be eligible for reimbursement when a project agreement is executed between *Railroad Name* and DRPT. However, if for some reason an agreement is not executed, then DRPT has no obligation to reimburse any expense that may have been incurred. All expense will be subject to audit and reporting requirements, which will be described in the project agreement.

Members of my staff are currently working with the Office of the Attorney General to develop a project agreement which will include all of the conditions and requirements of the grant program. DRPT anticipates providing the project agreement to you within the next 30 days.

Sincerely,

(Name of Director Here)
Director

C: Kevin B. Page

Attachment F

(If One Provided)

Conditional Notice to Proceed Dated *insert date*

Attachment G

SWAM Certification

SWAM Code Section

§ 2.2-4310. Discrimination prohibited; participation of small, women- and minority-owned business.
A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Minority Business Enterprise.
B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. The programs established shall be in writing and shall comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein. State agencies shall submit annual progress reports on small, women- and minority-owned business procurement to the Department of Minority Business Enterprise in a form specified by the Department of Minority Business Enterprise.
C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial measures consistent with prevailing law.
D. In the solicitation or awarding of contracts, no state agency, department or institution shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest.
E. As used in this section:
"Minority individual" means an individual who is a citizen of the United States or a non-citizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:
1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.
2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.
3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.
"Minority-owned business" means a business concern that is at least 51% owned by one or more minority individuals or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals and both the management and daily business operations are controlled by one or more minority individuals.
"Small business" means an independently owned and operated business which, together with affiliates, has 250 or fewer employees, or average annual gross receipts of $10 million or less averaged over the previous three years.
"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.
"Women-owned business" means a business concern that is at least 51% owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law, and both the management and daily business operations are controlled by one or more women who are citizens of the United States or non-citizens who are in full compliance with United States immigration law.

SWAM Reporting Form

Grantee Quarterly SWAM Expenditure Report

Fiscal Year 20XX Quarter 1st From Date of Agreement

Agreement Date: _____

Grantee Name: _____
Grant Type: **Rail Enhancement FY20XX_**
Name of Contact Person: _____
Title of Contact Person: _____
Phone number: _____
Email address: _____

Report only dollars of actual payments to vendors or expenditures of eligible Grantee force work, provided that Grantee.

I. Table A: Total DRPT Grant Expenditures and SWAM Prime Contracting & Purchasing Expenditures

SWAM PRIME CONTRACTING & PURCHASING EXPENDITURES: The amount spent with DMBE certified SWAM businesses OR eligible Grantee work force, provided Grantee is a SWAM, for work directly traceable to the fulfillment of a Grantee's contract or purchase order.

Attach lists of vendor names, Federal Tax ID's and payment amounts to the report

A. Total DRPT Grant Expenditures	B. Total Expenditures with Certified MBE	C. Total Expenditures with Certified WBE	D. Total Expenditures with Certified SBE
$	$	$	$

(MBE) Minority Business Enterprise, (WBE) Women-owned Business Enterprise, (SBE) Small Business Enterprise

Percentage of SWAM participation for this report period. (B+C+D)/A=_____

II. Table B: SWAM Contracting Expenditure Worksheet

List below the names of contractors, Federal Tax IDs, SWAM designation, Contract Number, and payment amounts to the contractor

Name of Contractor	Federal Tax ID	MBE, WBE or SBE	Description of Work	Contract NO/PO	Dollar Amount
Total Expenditures					

Completed forms must be submitted to:

Department of Rail and Public Transportation
Attention: Chief of Rail Transportation
1313 East Main Street
P.O. Box 590
Richmond, VA 23219

Developed by DRPT October 2007 from DMBE Supplier Diversity Expenditure Report: Revised December 5, 2005

APPENDIX D

RAIL ENHANCEMENT FUND SAMPLE BUDGET AND SCHEDULE

SAMPLE BUDGET

PROJECT BUDGET - SCHEDULE OF VALUES

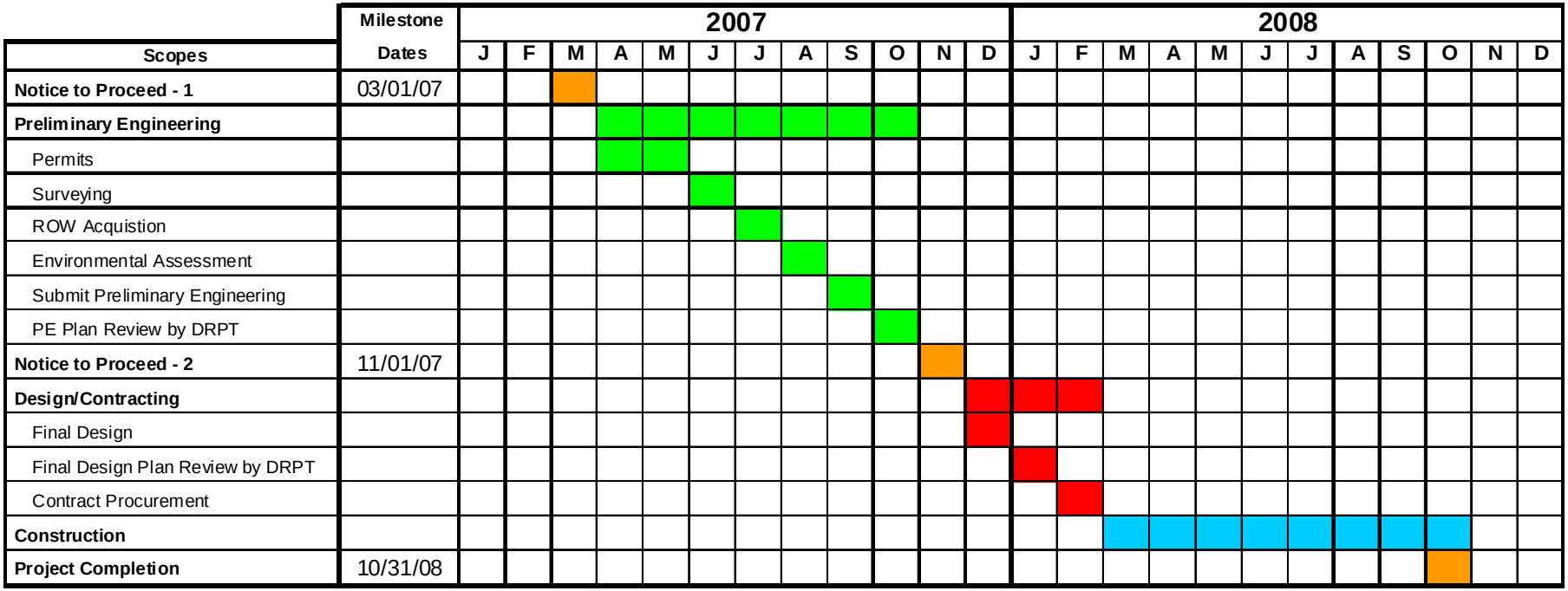
Program: Rail Enhancement Fund
Agreement: 76507-09
Grantee: XYZ Railroad Company
Project: Smithville Connecting Track

						Total To Date		Previous Total		Total This Period	
Scopes	Description of Work	Quantity		Unit Rate	Contract Value	Quantity/ Percentage	Value	Quantity/ Percentage	Value	Quantity/ Percentage	Value
Preliminary											
	Study	1	LS	$ 10,000	$ 10,000						
	Surveying	1	LS	$ 10,000	$ 10,000						
	Environmental Assessment	1	LS	$ 10,000	$ 10,000						
	Geotechical	1	LS	$ 10,000	$ 10,000						
	Preliminary Engineering	1	LS	$ 10,000	$ 10,000						
	Subtotal				**$ 50,000**						
Design/Contracting											
	Final Design	1	LS	$ 100,000	$ 100,000						
	Contract Procurement	1	LS	$ 10,000	$ 10,000						
	Construction Management	1	LS	$ 50,000	$ 50,000						
	Subtotal				**$ 160,000**						
Site Work											
	Clearing & Grubbing	1	Acre	$ 1,000	$ 1,000						
	Earthwork	1,000	CY	$ 10	$ 10,000						
	Drainage	100	LF	$ 100	$ 10,000						
	Subballast	1,000	TN	$ 10	$ 10,000						
	Subtotal				**$ 31,000**						
Structures											
	Bridge	1	LS	$ 100,000	$ 100,000						
	Tunnel	1	LS	$ 100,000	$ 100,000						
	Subtotal				**$ 200,000**						
Trackwork											
	Track Removal	1,000	TF	$ 20	$ 20,000						
	New Track	2,000	TF	$ 100	$ 200,000						
	Turnouts	2	EA	$ 50,000	$ 100,000						
	Tie Replacement	1,000	EA	$ 100	$ 100,000						
	Subtotal				**$ 420,000**						
Road Crossing											
	Removal	100	TF	$ 100	$ 10,000						
	Earthwork/Aggregate Base	1000	CY	$ 20	$ 20,000						
	Crossing Panels	100	TF	$ 500	$ 50,000						
	Subtotal				**$ 80,000**						
Signaling											
	Signal Building	1	EA	$ 100,000	$ 100,000						
	Signal Cabinets	1	EA	$ 50,000	$ 50,000						
	Signal Tower	1	EA	$ 20,000	$ 20,000						
	Powered and Heated Switch Machine	2	EA	$ 20,000	$ 40,000						
	Subtotal				**$ 210,000**						
Mechanical											
	Compressed Air System	10,000	LF	$ 10	$ 100,000						
	Subtotal				**$ 100,000**						
	SUBTOTAL DIRECT EXPENSES				**$ 1,251,000**						
Contingency											
	Construction Contingency (Approx. 5%)				$ 60,000						
	AGREEMENT TOTAL				**$ 1,311,000**						
	Maximum DRPT Participation	70%			$ 917,700						
	Local Match Participation	30%			$ 393,300						

SAMPLE SCHEDULE Page 1

Sample Schedule for Notice to Proceed - Planning and Design

Program: Rail Enhancement Fund
Agreement: 76507-09
Grantee: XYZ Railroad Company
Project: Smithville Connecting Track
Updated Date: 9/1/2007



Scopes	Milestone Dates	2007 J	F	M	A	M	J	J	A	S	O	N	D	2008 J	F	M	A	M	J	J	A	S	O	N	D
Notice to Proceed - 1	03/01/07																								
Preliminary Engineering																									
Permits																									
Surveying																									
ROW Acquistion																									
Environmental Assessment																									
Submit Preliminary Engineering																									
PE Plan Review by DRPT																									
Notice to Proceed - 2	11/01/07																								
Design/Contracting																									
Final Design																									
Final Design Plan Review by DRPT																									
Contract Procurement																									
Construction																									
Project Completion	10/31/08																								

Note: Grantee shall use activity categories applicable to proposed project.

SAMPLE SCHEDULE Page 2

Sample Schedule for Notice to Proceed - Construction

Program: Rail Enhancement Fund
Agreement: 76507-09
Grantee: XYZ Railroad Company
Project: Smithville Connecting Track
Updated Date: 9/1/2007

Scopes	Milestone Dates	2007												2008											
		J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D
Notice to Proceed - 2	02/01/07																								
Contract Procurement	04/01/07																								
Site Work																									
Structures																									
Trackwork																									
Road Crossing																									
Signaling																									
Mechanical																									
Project Completion	10/31/08																								

Note: Grantee shall use activity categories applicable to proposed project.
Schedule activities shall represent related Schedule of Values categories.

APPENDIX E

RAIL ENHANCEMENT FUND CODE

Rail Enhancement Fund Code

§ 33.1-221.1:1.1. Rail Enhancement Fund.

A. The General Assembly declares it to be in the public interest that railway preservation and development of railway transportation facilities are an important element of a balanced transportation system of the Commonwealth for freight and passengers and further declares it to be in the public interest that the retention, maintenance, improvement and development of the railways are essential to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets, and there is hereby created in the state treasury a special nonreverting fund to be known as the Rail Enhancement Fund which shall be considered a special fund within the Transportation Trust Fund, hereafter referred to as "the Fund."

B. The Fund shall be established on the books of the Comptroller, and shall consist of dedications pursuant to § 58.1-2425 and such funds from other sources as may be set forth in the appropriation act and shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely as provided in this section. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Virginia Department of Rail and Public Transportation or the Director's designee.

C. The Director of the Department of Rail and Public Transportation shall administer and expend or commit, subject to the approval of the Commonwealth Transportation Board, the Fund for acquiring, leasing, and/or improving railways or railroad equipment, rolling stock, rights-of-way or facilities, or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way or facilities, for freight and/or passenger rail transportation purposes whenever the Board shall have determined that such acquisition, lease, and/or improvement is for the common good of a region of the Commonwealth or the Commonwealth as a whole. Prior to recommending an allocation of the Fund to the Commonwealth Transportation Board, the Director of the Department of Rail and Public Transportation shall consult with and obtain the advice and recommendations of the Rail Advisory Board established pursuant to § 33.1-391.3:1.

D. Projects undertaken pursuant to this section shall be limited to those the Commonwealth Transportation Board shall have determined will result in public benefits to the Commonwealth or to a region of the Commonwealth that are equal to or greater than the investment of funds under this section. Such projects shall include a minimum of 30 percent cash or in-kind matching contribution from a private source, which may include a railroad, a regional authority, or a local government source, or a combination of such sources.

(2004, c. 621; 2005, c. 323.)

§ 58.1-2425. Disposition of revenues.

A. All funds collected hereunder by the Commissioner shall be forthwith paid into the state treasury. Except as otherwise provided in this section, these funds shall constitute special funds within the Commonwealth Transportation Fund. Any balances remaining in these funds at the end of the year shall be available for use in subsequent years for the purposes set forth in this chapter, and any interest income on such funds shall accrue to these funds. The revenue so derived, after refunds have been deducted, is hereby allocated for the construction, reconstruction and maintenance of highways and the regulation of traffic thereon and for no other purpose. However, (i) all funds collected pursuant to the provisions of this chapter from manufactured homes, as defined in § 46.2-100, shall be distributed to the city, town, or county wherein such manufactured home is to be situated as a dwelling; (ii) all funds collected from the additional tax imposed by subdivision A 4 of § 58.1-2402 on the rental of daily rental vehicles shall be distributed quarterly to the city, town, or county wherein such vehicle was delivered to the rentee; (iii) effective January 1, 1987, an amount equivalent to the net additional revenues generated by enactments of the 1986 Special Session of the Virginia General Assembly which amended §§ 46.2-694, 46.2-697, 58.1-2401, 58.1-2402 and this section shall be distributed to and paid into the Transportation Trust Fund, a special fund within the Commonwealth Transportation Fund, and are hereby appropriated to the Commonwealth Transportation Board for transportation needs; (iv) except as otherwise provided in clause (iii) of this sentence, all moneys collected from the tax on the gross proceeds from the rental in Virginia of any motor vehicle pursuant to subdivision A 3 of § 58.1-2402 at the tax rate in effect on December 31, 1986, shall be paid by the Commissioner into the state treasury and shall be paid into the Rail Enhancement Fund established by § 33.1-221.1:1.1; and (v) all additional revenues resulting from the fee imposed under subdivision A 5 of § 58.1-2402 as enacted by the 2004 Session of the General Assembly shall be used to pay the debt service on the bonds issued by the Virginia Public Building Authority for the Statewide Agencies Radio System (STARS) for the Department of State Police pursuant to the authority granted by the 2004 Session of the General Assembly.

B. As provided in subsection A of § 58.1-638, of the funds becoming part of the Transportation Trust Fund pursuant to clause (iii) of subsection A of this section, an aggregate of 4.2 percent shall be set aside as the Commonwealth Port Fund; an aggregate of 2.4 percent shall be set aside as the Commonwealth Airport Fund; and an aggregate of 14.5 percent in fiscal year 1998-1999 and 14.7 percent in fiscal year 1999-2000 and thereafter shall be set aside as the Commonwealth Mass Transit Fund.

(Code 1950, § 58-685.23; 1966, c. 587; 1976, c. 567; 1981, c. 145; 1984, c. 675; 1986, Sp. Sess., c. 11; 1987, c. 696; 1991, c. 323; 1997, cc. 283, 423, 853; 1998, cc. 905, 907; 1999, c. 77; 2004, c. 522; 2005, c. 323.)

§ 33.1-391.3:1. Rail Advisory Board.

There is hereby established the Rail Advisory Board to consist of nine members appointed by the Governor for terms of four years. Vacancies shall be filled for the unexpired term in the same manner as the original appointment. One of such appointees shall be an at-large member of the Commonwealth Transportation Board. The members of the Board shall elect a Chairman. The Board may, by majority vote, choose one of its members to serve as vice-chairman. The Board shall, in consultation with the Director, develop recommendations to be presented to the Commonwealth Transportation Board regarding allocations of funds from the Rail Enhancement Fund. The Board shall also advise the Director and the Department on other matters at the request of the Director or the Department. The Board shall meet at the call of the Chairman. A majority of the members shall constitute a quorum for the conduct of all Board business.

The Board shall have the following responsibilities:

1. In consultation with, and with the assistance of the Director, the Board shall develop recommendations to be presented to the Commonwealth Transportation Board regarding all proposed allocations of funds from the Rail Enhancement Fund.

2. The Board shall work cooperatively with the Director of the Department of Rail and Public Transportation and with any affected railroad in identifying, developing, and advocating projects and policies to enhance the quality and utility to the public of rail transportation in the Commonwealth.

3. At the request of the Director, the Board shall consider and advise the Director and the Department on any other matter or matters pertaining to transportation in the Commonwealth.

Members of the Board shall receive no compensation, but shall be reimbursed their actual and necessary expenses incurred in connection with their official duties. Staff support for the Board shall be provided by the Department of Rail and Public Transportation.

(2005, c. 323.)

DRPT
Virginia Department of Rail and Public Transportation
The Smartest Distance Between Two Points